118-58

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1233.

GEORGE CASHMAN, APPELLANT,

vs

THE AMADOR AND SACRAMENTO CANAL COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 21, 1885.

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INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna	9	10
Marshal's return	10	11
Enrollment	13	12
Decree	14	13
Memorandum of costs and disbursements	20	15
Affidavit of Chas. A. Swisler	22	16
Memoranda of costs and disbursements	25	16
Order to show cause and restraining order	32	20
Marshal's return	33	21
Affidavit of J. C. Pierson	38	23
Geo. O. Bates	45	27
Geo. W. Hancock	50	29
James Galloway	53	30
L. H. Fassett	56	32
Joseph Sims	58	33
Alexander Dunn	60	34
O. Sanders	61	35
C. A. Pearson	64	36
W. F. McCraken	65	37
R. W. Parker	67	38

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	Original.	Print.
Affidavit of Seth Loveless	76	42
B. M. Cope	76	42
John Kohlert	76	42
Diagram of "Indian Digging Creek"	84	45
Affidavit of G. W. Smith	85	45
J. D. French	85	45
A. Ball	87	46
G. F. Hale	87	46
H. S. Upton	87	46
A. H. Jenkerson	94	49
Return to order to show cause	97	50
Affidavit of Jennie B. Ritter	99	51
H. S. Byam	117	58
W. S. Jennings	123	60
Oliver Plummer	127	62
J. C. Sherwood	129	62
S. H. Hawkins	131	63
H. W. Plummer	133	64
G. W. Heath	135	64
E. B. Heath	137	65
A. O. Dugan	139	66
H. Bright	141	66
A. F. Raymond	143	67
A. J. Kellogg	145	68
B. F. Perry	147	68
G. G. Gilbert	149	69
R. W. Ketchum	150	70
H. M. Ward	152	70
F. Prothero *et al.*	154	71
H. M. Crawford *et al.*	157	72
Exhibit A—Bill of complaint in case of Hobbs *v.* Amador and Sacramento Canal Co	162	75
B—Restraining order in same	176	80
BB—Motion to dissolve injunction in same	177	81
C—Opinion in same	179	81
D—Order denying motion to dissolve injunction in same	190	86
H—(Jennie B. Ritter.) Agreement between Cashman & Co., of Sacramento, Sept. 26, 1885	192	86
I—Letter of G. F. Allardt to Mr. Byam, June 22, 1885	195	87
J—Diagram	196	88
Return to order to show cause	198	88
Affidavit of J. Bliss	200	89
C. A. Cramer	202	90
J. Doty *et al.*	204	90
E. B. Heath *et al.*	207	92
Return of Welch & Gallogly	209	93
Affidavit of Martin Welch	211	93
Moses Patterson *et al.*	216	95
Exhibit A—Diagram	222	98
Affidavit of B. S. Tyler	223	98
Curtis Bolton	227	100
M. Heffran	229	101

	Original.	Print.
Affidavit of J. B. Gates	231	101
Geo. N. Makee	233	102
I. P. Lambing	235	103
G. W. Phillips	238	104
P. C. Hearty	240	105
Eugene Dooley	242	106
Frank Frates	244	107
Order allowing appeal	246	107
Bond	247	108
Clerk's certificate	251	109
Citation	253	109
Proof of service of citation	256	110

1 *Bill of Complaint.*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR & SACRAMENTO CANAL CO. *et al.*, Defendants.

To the judges of the circuit court of the United States for the district of California, in the ninth circuit:

George Cashman, an alien and a citizen of Canada, brings this bill against the Amador and Sacramento Canal Company, a corporation created under and in pursuance of the laws of the State of California, H. S. Byam, John D. Hurley, John Haggerty, —— Mackey, whose christian name is unknown, but when discovered your orator prays for leave to insert it herein, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, and Henry Levy Lambing, who are copartners, residing at and engaged in mining at Irish Hill, in Amador county, under the firm name of Lambing Brothers; Abner T. Hale and Jacob C. Baughman, who are copartners, residing at and engaged in mining at Indian Diggings, in El Dorado county, under the firm name of Hale & Baughman; Aaron Ball, James Gallogly, Jeremiah Bliss, all of said defendants being citizens of the State of California; and thereupon you orator complains and says:

I.

That your orator, on January 30, 1883, purchased and became the owner of, and has ever since owned and resided upon, and does now own and reside upon, those certain premises situate in Sacramento county, of the State of California, and which are known and described as lot number twelve (12) of the Omochumnes grant, patented by the United States on the first day of July, 1870, which said premises are bounded on the north by the Sheldon grant line road, on the east by the lands of John Richards, on the south by the Cosumnes river, and on the west by the lands of Robert Nichols (formerly belonging to the estate of Thomas Treganza, deceased), containing seven hundred acres, more or less. That of said parcel of land the complainant and those under whom he claims and derives title, for more than the twenty years immediately last past, have been, and complainant is now, in the actual and adverse possession thereof, claiming to own the same as against the whole world.

2 That said tract of land, except where injured as hereinafter described, is well adapted to raising all the staple crops of this State, and is situated on the north bank of the Cosumnes river, about twelve miles from its mouth, and has a frontage on said stream of about half a mile. That said tract of land contains three hundred and fifty acres of bottom land and three hundred and fifty acres of upland. That complainant's bottom land was rich and highly productive alluvial land, capable of producing corn, wheat, and all the

valuable agricultural staples of the State, and but from the damage already done to it by hydraulic mining debris, and the further damage apprehended from the same cause, as hereinafter described, would be worth $150 an acre. That the upland of complainant is productive land, producing wheat and barley, and its general elevation is not more than from fifteen to thirty feet higher than complainant's bottom land aforesaid. That the improvements on the said tract of land of complainant consist of a dwelling-house, a stable, a hay barn, a well, and the usual out-houses. That the same are worth about $3,000.00.

II.

That the Cosumnes river is a large living stream which rises high in the summit of the Sierra Nevada Mountains, and on a steep grade (exceeding twenty feet to the mile) and through deep defiles and rocky canyons pursues a general westerly course until it reaches Cook's Bar, where it enters the Sacramento Valley and crosses it on a grade suddenly reduced to three feet, and which gradually decreases to six inches per mile, and empties into the Mokelumne river at a place called Mokelumne City, about twenty miles from said Cook's Bar. That said river is subject to sudden rises and freshets during the rainy season of each year, and in the spring of the year and during the melting of the snow on the mountains it remains high. That until the regimen of said river was affected by the deposits of mining debris in it from the mines of the defendants, the said river, in crossing the Sacramento Valley, ran in a well-defined channel between banks sufficiently high to protect the bottom lands of its margins from overflow, and the waters thereof were clear in summer and sufficiently pure at all seasons of the year for household, stock, and farm uses, and for the purposes of irrigation.

III.

That the defendants are now and for the last few years have been engaged in mining by the hydraulic process at those certain places on the headwaters of the Cosumnes river, in Amador, Sacramento, and El Dorado counties of this State, known as Hill Top, Michigan Bar, Forest Home, Irish Hill, Indian Diggings, and Indian gulch, and in the immediate vicinity of such places; that the mines or mining claims at the places aforesaid, and so worked and operated by the said defendants, are situated at elevations of from about 175 to 250 feet above complainant's premises, and the tailings from said mining operations are run out and washed into the Cosumnes river, and into those gulches and streams leading into and tributary to the said river, known as Buckeye gulch, Greasewood creek, Indian gulch, and Cook's gulch, and several other shorter and steeper ravines having no name, and thence they flow into and down Cosumnes river and become a common and undistinguishable mass several miles above the premises of the complainant.

That the defendant, The Amador and Sacramento Canal Company, is a corporation organized under the laws of the State of Cali-

fornia for the purpose of constructing ditches and carrying water in the same to mines, and disposing of the same and mining therewith; that the said defendant, The Amador and Sacramento Canal Company, has acquired the possession of and claims to own a large tract of mineral land at a place called "Hill Top," in Sacramento county, and which is situated a short distance south of that place in said county, known by the name of Cook's Bar, and which said mine and mining ground are also situated adjoining to and embrace a gulch or ravine, known by the name of Cook's gulch, about three-quarters of a mile long, and which empties into the said Cosumnes river at said Cook's Bar; that the
3 said mining ground of the said defendant, The Amador and Sacramento Canal Company, is about 175 feet above the level of the Cosumnes river, and consists of red earth, gravel, sand, and cobble-stones, readily disintegrated by water and powder; that the said defendant has conducted to said mining ground (which has acquired the name of the "Hill Top Mine"), from the headwaters of the Cosumnes river, by means of ditches, flumes and pipes, a supply of water exceeding 1,000 inches by miners' measurement, and has fully equipped its said mine with iron pipes, giants, reservoirs, flumes, tail races, and the other appliances usually found at first-class hydraulic mines; that the dump of said mine is in the Cosumnes river, and part of the equipment of said mine consists in a flume or tail race, laid in the lower part of Cook's gulch, and through which all the tailings, debris, and refuse matter set loose in the course of the operation of said mine (with the exception of the heavier stones) pass into the Cosumnes river; that said defendant has for the last fourteen or sixteen years been operating said Hill Top Mine, and in working the same has deposited in the Cosumnes river, through Cook's gulch, aforesaid, over ten millions of cubic yards of tailings, consisting of sand, fine gravel, and slikens (the great bulk thereof being sand), in addition to quite a large quantity of similar mining debris deposited in the bed of said river through other gulches and ravines, and notably through one lower down on said river called Arkansas gulch.

That the other defendants are mining, by the hydraulic process, higher up towards the sources of the Cosumnes river, and the land which they are so engaged in mining is higher than the land of the said Hill Top mines. That the land which they are so engaged in mining is of the same general character as that of the Hill Top mines, consisting of red earth, gravel, sand, and cobble-stones, readily disintegrated by water and powder, and possesses, on a smaller scale than the Hill Top mines, the usual appliances for hydraulic mining; that all of the said defendants have been and are now using in prosecuting their mining operations, as aforesaid, at least 2,800 miners' inches of water, and are therewith washing from their mines and depositing in the beds and channels of the Cosumnes river, and the short and steep tributaries aforesaid, a large quantity of moving tailings, from at least 300,000 cubic yards and upwards for the annual water season, and will, unless restrained by this court, continue to do so until their said mines or mining claims are exhausted, and

which will be many years hence, as your orator is informed and verily believes.

That the mines worked by the said defendant, The Amador and Sacramento Canal Company, are situated at or near Michigan bar, being about a mile southwest therefrom in Sacramento county, California, and the tailings are discharged into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by defendant, H. S. Byam, is situated also at or near Michigan bar, being about a mile southwest therefrom in Sacramento county, California, and the tailings therefrom are discharged into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by defendant, John D. Hurley, is situated also near Michigan bar, being about a mile southwest therefrom in Sacramento county, California, and the tailings therefrom are discharged into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by defendant, John Haggerty, is also situated near Michigan bar, in Sacramento county, California, and the tailings therefrom are discharged into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by defendant, ——— Mackey, is situated near Michigan bar, in Sacramento county, California, and the tailings therefrom are discharged into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by defendant, Martin Welch, is situated near Michigan bar, in Sacramento county, California, and the tailings are discharged therefrom into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by defendant, Gideon Devore, is situated near and a little west of Forest Home, in Amador county, California, and the tailings are discharged into a gulch that leads into and is a tributary of the Cosumnes river.

4 The mine worked by defendant, George W. Phillips, is situated at Irish Hill, in Amador county, California, and the tailings therefrom are discharged into Greasewood gulch and thence into Buckeye gulch, both being tributaries of the Cosumnes river.

The mine worked by said defendants, Ira P. Lambing and Henry L. Lambing, is situate at Irish Hill, in Amador county, California, and the tailings therefrom are also discharged into Greasewood gulch and thence into Buckeye gulch, both being tributaries of the Cosumnes river.

The mine worked by said defendants, Abner T. Hale and Jacob C. Baughman, is situated at Indian Diggings, in El Dorado county, California, and the tailings therefrom are discharged into Indian gulch, a tributary of the Cosumnes river.

The mine worked by the defendant, Aaron Ball, is situated in Indian gulch, about a mile south of Indian Diggings, in El Dorado county, California, and the tailings therefrom are discharged into Indian gulch, a tributary of the Cosumnes river.

The mine worked by James Gallogly is situated near Michigan bar, in Sacramento county, California, and the tailings therefrom are discharged into Cook's gulch, a tributary of the Cosumnes river.

The mine worked by Jeremiah Bliss is situated about a mile and half east of Forest Home, and in Amador county, California, and the tailing therefrom are discharged into gulches and canyons leading into and connected with the Cosumnes river.

IV.

And, further complaining, your orator says that hydraulic mining, as now practiced and understood, is a mode of practice of mining for gold by which huge banks of earth and gravel, usually composed of streaks containing gold enough to pay for washing and streaks which do not (the latter in cubic contents largely predominating), are washed and removed from their natural position within casings of slate rim rock (after being shaken up and shattered by means of powder or some other loosening process) into sluiceways and flumes, and thence into the natural water-courses and rivers by means of streams of water forced through iron pipes and thence discharged from nozzles attached to said pipes with great force and velocity against the said banks of earth and gravel by a heavy water pressure of from 150 to 400 feet, the gold being separated from the earth, sand, and gravel by the action of the water and retained in pavements in said sluiceways and flumes while the solid matter, consisting of boulders, cobble-stones, pebbles, sand, and clay, generally called and known as tailings or mining debris (which adulterates the water used in washing and removing it to the dump to the extent of at least eight per cent. thereof), is washed into and down said natural water-courses and rivers throughout their entire length.

The lighter portions move down currently with the stream, while the heavier portions roll along the bottom with velocities depending upon the volume and force of the current; and such heavier portions, in moving along the sides and beds of the stream, and from contact with each other, cause an increasing abrasion of such heavy matter, tending to reduce each fragment thereof to smaller dimensions, thereby increasing the bulk thereof fourfold, and the facility with which it is transported by the water, until the greater part of it finally assumes the finest grades of sand and clay, and such comminution of such heavier rock is greatly accelerated by its friable and readily decomposable nature on coming in contact with atmospheric influences at the dumps aforesaid in the water-courses.

V.

And your orator, further complaining, says that the tailings or mining debris discharged into the Cosumnes river from the mines of the defendants have been washed and removed by the waters of said stream, and that used in the operation of the mines of defendants, down said river, and lodged and deposited in the bed on the bottom of lands of said river throughout its whole length, and therewith the bed of said river has been filled up from depths
5 varying from ten to thirty feet, and complainant's bottom lands, as well as all the other bottom lands on said river, have been overflowed and injured to a much greater extent than at

any time before the commencement of such mining by defendants, or either of them. That the rate of filling in the said channel of the Cosumnes river, below the dumps of the mines of the defendants down to and for a great distance below complainant's lands aforesaid, has increased most rapidly in the last four years, and is still increasing rapidly each year, and will continue to increase until defendants' said mining operations be stopped. That a large number of acres of complainant's said bottom land has in the last three years been covered with sand from the mines of the defendants, to their great and irreparable injury, and said deposits on complainant's lands each year are increasing in depth and extent. That immediately following said deposits there comes, in aggravation of the evil and as an inseparable part of it, a dense growth of willows, and so it is that over 175 acres of plaintiff's bottom land aforesaid, where, three years ago, he raised a large and profitable crop of corn, is now covered by a deposit of sand, varying in depth from three to eight feet, and on which there is already a thicket of dense and worthless willows. That complainant has constructed a line of levee, half a mile in extent, along the entire river boundary of his land, and a cross-levee, a mile in length, from the river levee to his high upland, and has spent in the last three years for levees over $4,000, and yet has not been able to protect all his bottom land aforesaid from being flooded by the debris from the mines of the defendants. That he is now raising his levees to an average heighth of three feet, which will make the levees from ten to fifteen feet high, and is extending his cross-levee for three-quarters of a mile further; but even this increase in his levees will not be sufficient to protect his lands from overflow unless the defendants be restrained from depositing the tailings from their said mines into the Cosumnes river and its tributary gulches.

And your orator, further complaining, says that in many places above complainant's premises the channel of said river, from the said mining debris, has become choked and filled, which has caused the debris-laden water of said river, at its high stages, to leave its old channels and to seek new ones, and, finally, to rush like a torrent over complainant's land, and to tear it up in places and make great furrows and gullies in it, and in other places, where its current was checked or deadened, to leave deposits of sand, destroying such crops as happened to be in the way, and doing great and irreparable injury to said land.

And your orator, further complaining, says that, in addition to this damage, the choking and filling in the channel of said river as aforesaid, from the mining debris aforesaid, have damaged such of complainant's bottom lands as could be tilled by postponing unduly the plowing and seeding thereof at the customary part of the year. That in the year 1884 the water from said river remained on all of complainant's land suitable for cultivation till August, and during this dry year till June. That the deposits of the mining debris aforesaid in said river bed and on complainant's land has already taken away more than one-half of its value, and all of it, from the same cause, is threatened with destruction. That were it not for the

mining debris aforesaid, continuously deposited in said river from the mines of defendants, the waters of said river, from its source down to and past complainant's lands aforesaid, would be reasonably clear, and thoroughly adapted to household, farm, and animal uses; but so it is that the waters of said river, about eight or ten years ago, commenced getting foul from the presence of said mining debris, and each year since has been gradually growing worse, until now it is utterly unfit for any useful purposes whatever; and your orator further avers that if defendants be suffered to continue their mining operations as aforesaid, and to deposit the tailings from their mines as aforesaid into the bed of said river, the channel thereof, abreast of and above complainant's premises, will become more and more filled until it is entirely obliterated, and the waters of said river, charged with said hydraulic mining slimes, sands, and debris, having no channel to flow in, will run at random over and will cover all of complainant's lands with said destructive material, to their great and irreparable injury.

6 VI.

And your orator, further complaining, says that the power of the water of the Cosumnes river to scour out and carry off the tailings or debris deposited in the bed and channel of said river, as aforesaid, is proportioned to the depth and purity of the water flowing between its banks; the greater the depth of the water so flowing and the greater its purity the greater are its force and power to carry off said deposits; that said force and power decreases in proportion to the diminution of the depth of water so flowing in said river-bed or channel, and to the extent that said water is charged with earthy matter, and that if the defendants stop mining at their mines, and do not resume the same, that the waters of Cosumnes river will commence at once to scour out and carry off the debris heretofore deposited therein, as aforesaid, and will, in a few years, restore said river to its former original condition.

And your orator further says that said deposits of tailings made by the defendants, as aforesaid, change the waters of Cosumnes river, and its aforesaid tributaries, from pure and clear water of the first quality into that of a character so foul and so heavily charged with earthy matter as to be unfit for any kind of use, and so it is that, for his household, domestic, and farm uses, your complainant cannot and does not use the water flowing down Cosumnes river, but for all such purposes has to use water from his well.

And your orator further says that the said defendants make varying and unequal deposits of tailings in the streams aforesaid, and they flow from their dump into the Cosumnes river, mingle and commingle with each other in the channel of the said Cosumnes river immediately below Cook's gulch, and so flow a common mass of undistinguishable parts down the said Cosumnes river and upon your orator's lands, and other lands adjacent to the Cosumnes river, and down to and in the channels of the streams flowing abreast of and through your orator's premises, and below the same, to the great and irreparable injury of your orator.

And your orator, further complaining, says that the deposits of mining tailings made by defendants, as aforesaid, so corrupt, charge with sedimentary matter, and foul the water of the Cosumnes river as to cause sedimentary deposits thereof in the bed or channels of the said Cosumnes river, and cause it to raise its bed as it flows through the valley, whereas were it not corrupted by use in hydraulic mining it would no longer make deposits, but would cut out and transport away its accumulated deposits to the great betterment of your complainant and his said lands, and that within a comparatively few years said river, throughout its valley division, would be restored to its former and original condition of a narrow and deep channel with a hard bottom, and pure water running therein, and in course of a few years thereafter the portion of the lands of the complainant, now so badly injured through improved drainage and fertilization from rapidly decaying vegetation, would regain most of its lost value and former usefulness.

And your orator, further complaining, says that each of the defendants herein has largely and materially contributed to the damage and injury herein complained of, and intends to continue so to do; yet, from the causes aforesaid, it is and always will be impossible for him to ascertain or prove the proportion in which either or any of the defendants have or has contributed to his damage and injury, as aforesaid, or will hereafter contribute to the damage and injury apprehended by him.

And your orator further complains and says that if defendants are not restrained from making further deposits of mining tailings or mining debris into the Cosumnes river and its aforesaid tributaries, your orator will no longer be able to protect or cultivate or reside upon any part of his said lands, but will be compelled to abandon them, and they will be covered with sand, clay, and slickens and transformed into a valueless willow and cottonwood swamp, through which the foul water of the Cosumnes river will run at random at its high and low stages.

And your orator further avers that to the nuisance aforesaid, and of which your orator herein complains, each of the defend-
7 ants has been a large and material contributor, and will hereafter contribute largely and materially to the nuisance and damage which your orator apprehends, unless they be enjoined as aforesaid.

And your orator further avers that the acts of the defendants in using the channel and beds of the Cosumnes river and its aforesaid tributaries as a place for the deposit and wastage of their tailings as aforesaid constitute a nuisance to your orator and his property as aforesaid, and are an obstruction to the free and comfortable use by your orator of his said property, and interfere with and prevent your orator from enjoying and using his property and threaten it with destruction. And your orator further says that if defendants be further permitted to use the bed and channels of the Cosumnes river and its tributaries aforesaid as a place for the deposit of the tailings from their said mines it will cause all his lands aforesaid to

be overflowed with sand, clay, and slickens, and to become worthless and unfit for cultivation or habitation.

And your orator further alleges that the unlawful acts of the defendants above complained of constitute a nuisance of a constantly recurring nature, produced and continued by repeated wrongful acts of defendants, and that the only appropriate and adequate remedy is by the injunction of a court of equity.

And your orator, further complaining, says that said defendants refuse to discontinue said wrongful and injurious acts, and allege and pretend, and they severally claim adversely to your orator, an easement to flow and deposit upon your orator's premises, and in the said water courses in front of the same, their said tailings or mining debris, and also severally claim a common right to deposit the tailings and debris from their several mines or mining ground into Cosumnes river and its aforesaid tributaries, and to suffer and to cause the same to flow down the channels of the said river, and to be deposited on the lands of the complainant, and in the streams in front of and running through the same, whereas your orator alleges, in truth and in fact, that none of the defendants possess any or either of the rights or easements so called.

Your orator says that the damage which his said lands will sustain, if the said defendants shall not be restrained from prosecuting their said several mining works, will exceed the sum of one thousand dollars; that the value of the said mines or mining claims of said defendants exceeds the sum of ten thousand thousand dollars, and that the matter in dispute in this action, exclusive of costs, exceeds in value the sum of ten thousand dollars.

VII.

In consideration whereof, and for as much as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, and may it please your honors to grant unto your orator, pending the hearing of this suit, the writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directed to each of the said defendants, enjoining and restraining them, and each of them, from discharging or dumping into the Cosumnes river, or from assisting to discharge or to dump, and from taking any part in discharging or dumping into Cosumnes river, or any of its forks, gulches, ravines, or tributary streams, any of the tailings, boulders, cobble-stones, gravel, sand, clay, debris, or refuse matter from any tracts of mineral lands or mines, wheresoever situate, and also from causing or suffering to flow into said river, its forks or tributary gulches, ravines, or streams aforesaid, any of the tailings, boulders, cobble-stones, gravel, sand, clay, or refuse matter therefrom, and also from suffering or allowing others to use their, his, or its water supply, or any part thereof, for the purpose of washing into said streams, gulches, or ravines any earth, rocks, boulders, clay, sand, or other solid material contained in any other ground or

mine, and also from suffering or allowing their mining claims to be worked or operated by any one else.

And may it please your honors, on the final hearing of this cause, to make such injunction perpetual, and to require the defend-
8 ants to pay the costs of this suit, and that your orator may have such further or other relief in the premises as the nature of the circumstance of this case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to each of the said defendants, viz., Amador and Sacramento Canal Company, H. S. Byam, John D. Hurley, John Haggerty, —— Mackey, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, Henry Levy Lambing, Abner T. Hale, Jacob C. Baughman, Aaron Ball, James Gallogly, and Jeremiah Bliss, commanding them, and each of them, on a day certain therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand and to perform and abide such further order, direction, and decree as may be made against them, or each of them; and your orator, as in duty bound, will ever pray, etc.

ROB'T T. DEVLIN,
Solicitor for Complainant.

S. C. DENSON,
A. L. RHODES,
Of Counsel.

UNITED STATES OF AMERICA,
State of California, County of Sacramento, } ss:

George Cashman, being first duly sworn, deposeth and saith that he has read the foregoing bill and knows the contents thereof; that the said bill is true, of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

GEO. CASHMAN.

Subscribed and sworn to before me, this second day of September, 1885.

[SEAL.] ROB'T T. DEVLIN,
Notary Public, Sacramento County.

Endorsed: Filed September 9th, 1885. L. S. B. Sawyer, clerk.

Subpœna.

9 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

The President of the United States of America to Amador and Sacramento Canal Company, a corporation created under and in

pursuance of the laws of the State of California; H. S. Byam, John D. Hurley, John Haggerty, —— Mackey, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, and Henry Levy Lambing, copartners under the firm name of Lambing Brothers; Abner T. Hale and Jacob C. Baughman, copartners under the firm name of Hale & Baughman; Aaron Ball, James Gallogly, and Jeremian Bliss, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the second day of November, A. D. 1885, to answer a bill of complaint exhibited against you in said court by George Cashman, who is a citizen of Canada and an alien, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By ——— ———,
Deputy Clerk.

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of November next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

L. S. B. SAWYER, *Clerk*,
By ——— ———,
Deputy Clerk.

10 *Summons.*

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 9th day of Sept., 1885, and personally served the same on the Amador and Sacramento Canal Company on the 16th day of September, 1885, by delivering to and leaving with Jennie B. Ritter, secretary of said Amador and Sacramento Canal Company, said defendant named therein, at the county of Sacramento, in said district, a certified copy thereof.

San Francisco, Nov. 21, 1885.

M. M. DREW,
U. S. Marshal,
By T. G. ROBINSON, *Deputy*.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 9th day of

Sept., 1885, and personally served the same on the 12th day of October, 1885, by delivering to and leaving with Gideon Devore, A. T. Hale, Jacob C. Baughman, Aaron Ball, Jeremiah Bliss, and Hale & Baughman, said defendants named therein, personally, at the
11 county of Sacramento, in said district, a certified copy thereof.

I further certify that I personally served the same on the 14th day of October, 1885, by delivering to and leaving with James Gallogly, said defendant named therein, personally, at the county of Sacramento, in said district, a certified copy thereof.

M. M. DREW,
U. S. Marshal,
By T. G. ROBINSON, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 9th day of September, 1885, and personally served the same on the 16th day of September, 1885, by delivering to and leaving with Martin Welch, one of said defendants named therein, personally, at the county of Sacramento, a certified copy thereof. I personally served the same on the 28th day of September, 1885, by delivering to and
12 leaving with H. S. Byam, John D. Hurley, Geo. W. Phillip, Ira P. Lambling, H. L. Lambling, & Lambling Bros., said defendants named therein, personally, at the county of Sacramento, in said district, a certified copy thereof.

M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 9th day of Sept., 1885, and personally served the same on the 15th day of October, 1885, by delivering to and leaving with John Haggerty, said defendant named therein, personally, at the county of Sacramento, in said district, a certified copy thereof.

M. M. DREW, *U. S. Marshal.*
By T. G. ROBINSON, *Deputy.*

Endorsed: Filed Nov'r 21st, 1885. L. S. B. Sawyer, clerk.

13 *Enrollment.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR & SACRAMENTO CANAL COMPANY *et al.*, Respondents. } No. 3833.

The complainant filed his bill of complaint herein on the 9th day of September, 1885, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued, returnable on the second day of November, A. D. 1885, which is hereto annexed.

The respondents, Abner T. Hale, J. C. Baughman, and Aaron Ball, appeared herein on the 2d day of November, 1885, by George G. Blanchard, Esq., their solicitor.

On the same day, to wit, November 2d, 1885, the respond-
14 ents, George W. Phillips, Ira P. Lambing, and Henry Levy Lambing, appeared herein, by Estee & Wilson, Esq's, their solicitors; and the respondents, The Amador and Sacramento Canal Company, H. S. Byam, James Gallogly, Martin Welch, Jeremiah Bliss, and Gideon Devore, appeared herein, by McKune and George, Esq's, their solicitors.

Thereafter a final decree was filed and entered herein in the words and figures following, to wit:

Decree.

In the Circuit Court of the United States, Ninth Circuit, in and for the District of California.

GEORGE CASHMAN
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY *et al.* } No. 3833.

And now, on this day, this cause came on to be heard before the court, on motion of the defendants, to dismiss the cause for
15 want of jurisdiction, A. L. Rhodes, S. C. Denson and R. T. Devlin, Esquires, appearing for complainant, and M. M. Estee, Geo. G. Blanchard, and J. H. McKune, Esquires, appearing for said motion, and it appearing to the satisfaction of the court by the admission of the counsel for the respective parties complainant and respondent at the hearing in open court that the county of Sacramento and the complainant herein entered into an agreement in writing in the words and figures following:

"Whereas the county of Sacramento desires to restrain the miners working by hydraulic process on the Cosumnes river and using the bed thereof as a place for the deposits and wastage of the tailings and debris from their mines; and whereas it is desired to bring such suit in the circuit court of the United States for the district of California and in the ninth circuit; & whereas George Cash-
16 man has brought or is about to bring such suit in said circuit court against the mine-s working on the Cosumnes river by hydraulic process; & whereas the county of Sacramento is directly interested in the said suit and in the subject-matter of litigation, and the same is brought for its benefit, the county being unable to sue in such court; & whereas the county of Sacramento, by a resolution duly passed by its board of supervisors on the 22d day of September, 1885, has agreed to pay the costs and expenses of such suit, and to keep the said George Cashman safe and harmless from all counsel fees, costs, and charges to be paid or incurred therein:

Now, therefore, this contract and indenture, made in pursuance of said resolution between the County of Sacramento, the party of the first part, and George Cashman aforesaid, party of the second part, witnesseth: That the party of the first part, the said County of Sacramento, does hereby stipulate, covenant, and agree
17 to supply the said George Cashman with the services of competent attorneys, to wit, A. L. Rhodes, S. C. Denson, and Robert T. Devlin, to institute, conduct, and manage such suit, and does further covenant and agree to pay all the charges, costs, and expenses thereof or connected therewith, and to hold and keep him, the said George Cashman, safe and harmless from any costs, counsel fees, charges, or expenses to be paid or incurred in the institution, conduct, and prosecution of the said suit.

"The said George Cashman, the party of the second part, does hereby stipulate, covenant, and agree not to compromise, dismiss, or settle the said suit without the consent of the County of Sacramento, and to allow the said county and the attorneys aforesaid in its behalf to manage and conduct the said suit to the same extent and in the same manner as if such suit had been commenced
18 by and was prosecuted in the name of the said County of Sacramento.

"In witness whereof the parties hereto, the party of the first — by the chairman of its board of supervisors, he being by a resolution of said board passed September 22, 1885, duly thereunto authorized, have hereunto set their hands and seals this 26th day of September, 1885.

This contract being executed in duplicate, each party retaining one.

[Seal of the Board of Supervisors of the County of Sacramento.]

COUNTY OF SACRAMENTO,
By L. H. FASSETT,
Chairman Board of Supervisors.
GEO. CASHMAN. [SEAL.]

Endorsed: Filed October 6, 1885. W. B. Hamilton, clerk."

And it appearing from said agreement that this suit is prosecuted in the name of the said complainant, Cashman, by and under the exclusive control of the County of Sacramento, for its benefit and wholly at its expense, and for that reason that it does not really and substantially involve a dispute or controversy within the
19 jurisdiction of this court:

It is therefore now ordered, adjudged, and decreed by the court that this suit be, and it is hereby, dismissed, and that the preliminary restraining order issued therein be, and the same is hereby, dissolved.

And that the defendants have and recover of and from plaintiff the costs in this behalf expended.

November 17, 1885.

(Signed) LORENZO SAWYER,
Circuit Judge.

Endorsed: Filed and entered November 17, 1885. L. S. B. Sawyer, clerk.

20 *Memorandum of Costs and Disbursements.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States, of the Ninth Circuit, in and for the District of California.

GEO. CASHMAN, Plaintiff,
vs.
AMADOR & SACRAMENTO CANAL COMPANY *et al.*, Defendants.

Memorandum of Costs.

Disbursements by def'ts A. & S. C. Co. and Byam:

Marshal's fees	$2 10	
Clerk's fees	10 00	
Witness' fees—92 witnesses 1 day at $2	184 00	dis'd.
Notary's fees—94 affidavits	47 00	
Total	$243 10	
	184	
Taxed at	$59 10	

L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA, } *ss:*
District of California, City and County of San Francisco, }

Jennie B. Ritter, being duly sworn, deposes and says that she is managing agent for the Amador & Sacramento Canal Co. & agent for H. S. Byam in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than any other person; that the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

JENNIE B. RITTER.

Subscribed and sworn to before me this 17 day of Nov'r, A. D. 1885.

F. D. MONCTON,
Commissioner U. S. Circuit Court, &c.

21 To Messrs. Rhodes, Devlin and Denson, solicitors for complainant:

You will please take notice that on Monday, the 23 day of November, A. D. 1885, at the hour of 11 o'clock a. m., we will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

McKUNE & GEORGE,
Attorney- for Certain Def'ts.

Endorsed: Service by copy admitted this 20th day of November, 1885. Robt. T. Devlin, solicitor for complainant. Filed this 21st day of Nov., A. D. 1885. L. S. B. Sawyer, clerk.

22 *Affidavit of Chas. A. Swisler.*

In the Circuit Court of the United States of the Ninth Circuit in and for the District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR & SACRAMENTO CANAL CO. *et al.*, Defendants.

STATE OF CALIFORNIA, }
County of El Dorado, } *ss:*

Chas. A. Swisler, being first duly sworn, says: That he is a white male citizen of the United States and is over the age of 21 years, & was over such age and such citizen at all the times hereinafter named, and is one of the solicitors & attorneys for defendants Hale, Baughman, & Ball in the above cause; that on the 20th day of November, 1885, he deposited in the United States post office at Placerville, El Dorado county, California, a true copy of the
23 annexed memorandum of costs and disbursements & of the annexed notice of application to the clerk of said court to tax said memorandum of costs & disbursements, which said copy of said memorandum and notice was duly sealed in an envelope and was directed and addressed to Rob't T. Devlin, Esq., the solicitor for said complainant, at Sacramento City, Sacramento county, California, and that postage thereon was fully prepaid; that said Sacramento City is the place of business and of residence of said Rob't T. Devlin, and is the place where he has his office, and that both of the solicitors and attorneys for said Hale, Baughman, and Ball, to wit, Messrs. Geo. G. Blanchard and Chas. A. Swisler, reside and have their office & place of business in said Placerville, between which said places, to wit, Sacramento City and Placerville, there is a regular daily communication by mail.

CHAS. A. SWISLER.

24 Subscribed and sworn to before me, this 20th day of November, 1885.

[NOTARIAL SEAL.] GEO. G. BLANCHARD,
Notary Public.

25 *Memorandum of Costs and Disbursements.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United State, of the Ninth Circuit, in and for the District of California.

GEORGE CASHMAN, Plaintiff,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

Disbursements.

Marshal's fees	
Clerk's fees	$10 00

Witness' fees	
Preparing and taking affidavit of B. M. Cope	10 00
" " A. T. Hale	10 00
" " Seth Loveless	10 00
" " John Kohlert	10 00
" " J. D. French	10 00
" " G. W. Smith	10 00
" " A. Ball	10 00
" " H. S. Upton	10 00
" " A. H. Jenkerson	10 00
" " B. S. Tyler	10 00
Amount paid B. M. Cope for surveying and making diagram in this case	25 00
Amount paid G. W. Smith for assisting in survey	3 00
Expenses of A. T. Hale in assisting in survey	3 00
" J. C. Baughman in assisting in survey	3 00
	$144 00
Disallowed	95
Taxed at	$49 00

L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, } ss:

Geo. G. Blanchard, being duly sworn, deposes and says: That he is one of the attorneys for the def'ts Hale, Baughman, & Ball in the above-entitled cause, and as such is better informed, relative to the above costs and disbursements, than the said defendants; that the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

GEO. G. BLANCHARD.

Subscribed and sworn to before me this 20th day of November, A. D. 1885.

[SEAL.] CHAS. A. SWISLER,
Notary Public.

26 To Rob't T. Devlin, solicitor for complainant, and S. C. Denson and A. L. Rhodes, of counsel, Sacramento, Cal.:

You will please take notice that on Monday, the 23d day of November, A. D. 1885, at the hour of 11 o'clock a. m., we will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

Dated November 20th, 1885.

GEO. G. BLANCHARD AND
CHAS. A. SWISLER,
Attorneys for Deft's Hale, Baughman, and Ball.

Endorsed: Filed this 21st day of Nov., A. D. 1885. L. S. B. Sawyer, clerk.

27 *Memorandum of Costs and Disbursements.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States, of the Ninth Circuit, in and for the District of California.

GEO. CASHMAN, Plaintiff,

vs.

AMADOR & SACRAMENTO CANAL CO. *et al.*, Defendants.

Memorandum of costs.

Disbursements by defendants, Martin Welch and James Gologly:

Marshal's fees	
Clerk's fees	
Witness' fees—76 witnesses, $2	$152 00 dis'd.
Notary fees—76 affidavits, at 50 cts., taxed at	38 00

L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA, } ss:
District of California, City and County of San Francisco, }

Martin Welch, being duly sworn, deposes and says, that he is a defendant; that he & James Gologly appeared separately and filed separate affidavits in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than any other person; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

MARTIN WELCH.

Subscribed and sworn to before me this 17 day of November, A. D. 1885.

F. D. MONCTON,
Commissioner U. S. Circuit Court, &c.

28 To Messrs. Rhodes Devlin, and Denson, solicitors for complainant:

You will please take notice that on Monday, the 23 day of November, A. D. 1885, at the hour of 11 o'clock a. m., we will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

McKUNE & GEORGE,
Attorney- for Certain Def'ts.

Endorsed: Service by copy admitted November 20, 1885. Rob't T. Devlin, solicitor for complainant. Filed the 21st day of Nov., A. D. 1885. L. S. B. Sawyer, clerk.

29 *Memorandum of Costs and Disbursements.*

UNITED STATES OF AMERICA.

In the Circuit Court of the United States, of the Ninth District, in and for the District of California.

GEORGE CASHMAN, Plaintiff,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

Memorandum of costs.

Disbursements:

Marshal's fees	
Clerk's fees	
Witness' fees	
Fee paid for appearance	$10 00
Notary fees, eight affidavits	4 00
Taxed at	14 00

L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA, } *ss:*
District of California, City and County of San Francisco. }

M. M. Estee, being duly sworn, deposes and says that he is one of the attorneys for George W. Phillips and Ira P. Lambing and brother, defendants in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said defendants; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

M. M. ESTEE.

Subscribed and sworn to before me this 20th day of November, A. D. 1885.

F. D. MONCTON,
Commissioner U. S. Circuit Court, &c.

30 To Rob't T. Devlin, A. L. Rhodes, and S. C. Denson, attorneys for plaintiff:

You will please take notice that on Monday, the 23d day of November, A. D. 1885, at the hour of 10.30 o'clock a. m., we will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

ESTEE & WILSON,
Attorney for Defendants, George W. Phillips and Ira P. Lambing and Brother

Endorsed: Service of the within admitted by copy this 20th day of November, 1885. Rob't T. Devlin, attorney for plaintiff. A. L. Rhodes & S. C. Denson, of counsel. Filed this 20 day of November, A. D. 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

31 *Clerk's Certificate.*

Whereupon said bill of complaint, subpœna, final decree, and four certain memorandums of taxed costs are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, &c.:

L. S. B. SAWYER, *Clerk*,
[SEAL.] By F. D. MONCTON,
Deputy Clerk.

Endorsed: Enrolled papers. Filed November 17th, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

32 *Order to Show Cause and Restraining Order.*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit. In Equity.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants. } No. 3833.

On reading the bill of complaint on file in this cause, and also the affidavits filed herein by the complainant, to wit, the affidavits of J. C. Pierson, George O. Bates, George W. Hancock, James Galloway, L. H. Fassett, Joseph Sims, Alexander Dunn, O. Sanders, C. A. Pearson, W. F. McCracken, and R. W. Parker, and on motion of Rob't T. Devlin, solicitor for the complainant, it is ordered that the said defendants mentioned in said bill of complaint, viz., The Amador and Sacramento Canal Company, a corporation created under and in pursuance of the laws of the State of California, H. S. Byam, John D. Hurley John Haggerty, —— Mackey, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, and Henry Levy Lambing, who are copartners under the firm name of Lambing Brothers, Abner T. Hale, and Jacob C. Baughman, who are copartners under the firm name of Hale & Baughman, Aaron Ball, James Gallogly, Jeremiah Bliss, and each of them, show cause, on the second day of November, 1885, at the opening of said court on said day, or as soon thereafter as counsel can be heard, at the court-room of said court, in the city and county of San Francisco, why a temporary injunction, as prayed for in said bill of complaint, should not be issued in said cause, by said court, enjoining and restraining said defendants, and each of them, from discharging or dumping into the Cosumnes river, or from assisting to discharge or to dump, and from taking any part in discharging and dumping into the Cosumnes river, or any of its forks, gulches, ravines, or tributary streams, any of the tailings, boulders, cobble-stones, gravel, sand, clay, debris, or refuse matter from any tracts or mineral lands or mines wheresoever situate, and also from causing or suffering to flow into said river, its forks or tributary gulches, ravines, or streams aforesaid, any of the tailings, boulders, cobble-stones, gravel, sand, clay, or refuse matter there-

from, and also from suffering or allowing others to use their, his, or its water supply, or any part thereof, for the purpose of washing into said stream, gulches, or ravines any earth, rocks, boulders, clay, or other solid material contained in any other ground or mine, and also from suffering or allowing their mining claims to be worked or operated by any one else.

And it is further ordered that the said defendants, and each of them, and their and each of their agents and servants, be, and they and each of them are and is, hereby enjoined and restrained until the decision upon said motion from doing, committing, or suffering any of the acts aforesaid sought by said bill of complaint to be enjoined, as prayed for therein, said preliminary restraining order to issue and take effect only upon filing in said cause, with the clerk of this court, a bond, approved by the clerk or by S. C. Houghton, a standing master in chancery of this court, in the sum of ten thousand dollars, payable to said defendants, conditioned that said plaintiff will pay said defendants such damages, not exceeding ten thousand dollars, as said defendants, or each of them, may sustain by reason of said restraining order, if said court shall finally decide that said complainant was not entitled thereto.

And it is further ordered that copies of the moving papers aforesaid, certified by the clerk or by the solicitor for the said complainant, be served upon said defendants.

San Francisco, September 12, 1885.

LORENZO SAWYER,
Circuit Judge.

33 (Endorsed.)

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within order on the 9th day of Sept., 1885, and personally served the same on the 15th day of Oct., 1885, by delivering to and leaving with John Haggerty, said defendant named therein, personally, at the county of Sacramento, in said district, a certified copy thereof, together with a copy of the bill of complaint, certified to by L. S. B. Sawyer, clerk U. S. circuit c't, and of the affidavits in the within order mentioned, all certified by Robert T. Devlin, solicitor for said complainant.

San Francisco, Nov. 21st, 1885.

M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON,
Deputy.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within order on the 9th day of Sept., 1885, and personally served the same on the 14th day of October, 1885, by delivering to and leaving with James
34 Gallogly, said defendant named therein, personally, at the county of Sacramento, in said district, a certified copy thereof,

together with a copy of the bill of complaint, certified to by L. S. B. Sawyer, clerk U. S. circuit c't, attached thereto, and of the affidavits in the within order mentioned, all certified by Robert T. Devlin, solicitor for said complainant.

M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON,
Deputy.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within order on the 9th day of Sept., 1885, and personally served the same on the 12th day of October, 1885, by delivering to and leaving with Gideon Devore, Abner T. Hale, Jacob C. Baughman, Hale & Baughman, Aaron Ball, & Jeremiah Bliss, said defendants named therein, personally, at
35 the county of Sacramento, in said district, a certified copy thereof, together with a copy of the bill of complaint, certified to by L. S. B. Sawyer, clerk of the U. S. circuit c't, and of the affidavits in the within order mentioned, all certified by Robert T. Devlin, solicitor for said complainant.

M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within order on the 9th day of Sept., 1885, and personally served the same on the 28th day of Sept., 1885, by delivering to and leaving with George W. Phillips, Ira P. L. Lambing, Henry Levy Lambing, Lambing Bros., H. S. Byam, & John D. Hurley, said defendants named therein, personally, at the county of Sacramento, in said district, a certified copy thereof, together with a copy of the bill of complaint, certified to by L. S. B. Sawyer, clerk of the U. S. cir. c't, and of the affidavits in the
36 within order mentioned, all certified by Robert T. Devlin, solicitor for said complainant.

M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within order on the 9th day of Sept. 1885, and personally served the same on the 16th day of Sept., 1885, on the Amador and Sacramento Canal Company by delivering to and leaving with Jennie B. Ritter, secretary of said Amador and Sacramento Canal Company, said defendant named therein, at the county of Sacramento, in said district, a certified copy thereof, together with a copy of the bill of complaint, certified to by

L. S. B. Sawyer, clerk of the U. S. circuit c't, and of the affidavits in the within order mentioned, all certified by Robert T. Devlin, solicitor for said complainant.

37 M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within order on the 9th day of September, 1885, and personally served the same on the 16th day of September, 1885, by delivering to and leaving with Martin Welch, said defendant named therein, personally, at the county of Sacramento, in said district, a certified copy thereof, certified by the clerk of said court, together with a copy of the bill of complaint in said cause and of the affidavits in the within order mentioned, all certified by Robert T. Devlin, solicitor for said complainant.

M. M. DREW,
U. S. Marshal.
By T. G. ROBINSON, *Deputy.*

Filed Nov. 21st, 1885.

L. S. B. SAWYER, *Clerk.*

38 *Affidavit of J. C. Pierson.*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

J. C. PIERSON, being first duly sworn, deposes and says that he is a civil engineer by occupation and resides in Sacramento City; that he is now and has been for five years last past county surveyor of Sacramento county; that he is acquainted with the property of the Amador and Sacramento Canal Company, one of the defendants herein, and with the mining ground situated at Hill Top, near Michigan Bar, in Sacramento county; that he has had oc-
39 casion to visit said grounds several times in a professional capacity; one of these times was in January, 1883. On the 5th and 6th days of January, 1883, two claims were in operation, one at the head of Cook's or Big gulch, immediately west of the store at Hill Top, and one northeasterly about one-quarter of a mile distant. In the first of these two claims eight hundred inches of water were being used. A portion of the water was directed over the bank at three different points, falling onto masses of gravel and earth which had caved from the banks. The balance of the water was directed against the banks through two giants of four

or five inch nozzle under a pressure of about 30 feet. All the water used was taken from the ditch of the Amador and Sacramento Canal Company, and was applied to the disintegration and washing of the banks into the sluices. This claim was being operated by defendant H. S. Byam. The second was a mine owned by Alfred Aut Henley and worked by him. He was using 200 inches of water, which he purchased from the Amador and Sacramento Canal Company. The greater portion of this water was directed against the bank through a giant of four-inch nozzle under a pressure of from 30 to 40 feet. The remaining water was used as a bank stream, falling over the bank for the purpose of caving it down and then helping to wash it into the sluice. The banks in both of these mines were composed of a light, sandy, red soil, mixed with gravel and slightly cemented. All the material washed from the banks, together with the water used in washing, was discharged from the sluices into Cook's gulch.

40 Cook's gulch extends from the Hill Top in a northwesterly direction to Cosumnes river, a distance of one and one-quarter miles, its point of junction being at Cook's Bar. In this gulch from time to time have been deposited tailings or debris from the mines, the heaviest portions of which have remained near its head. The effect of this has been to increase the grade of the gulch, thereby increasing the power of the water to transport the tailings to the Cosumnes river.

On the 7th and 8th days of January, 1883, affiant, in company with G. F. Allarat and L. F. Basset, made an examination of the Cosumnes river and of the lands adjacent to its banks from Cook's Bar to a line some distance below the lands of complainant. The river for this entire distance has been filled to a great extent with mining debris, causing it to shift its channel in places, cutting new channels, and filling the old with sand, gravel, and slickens; that the filling of the channel at that time was from five to fifteen feet in depth; that thereby the water plane of the river was raised, causing more frequent, extensive, and disastrous flooding of the adjoining lands with water and mining debris; that he then found a large portion of these lands injured or destroyed for all agricultural purposes by deposits of debris upon them; that he is familiar with the character of the debris coming down from the mines of the defendant, The Amador and Sacramento Canal Company, and he believes that said mines have contributed largely to the destruction of the lands along the river, including those of the complainant.

41 Affiant further says that he is familiar with the lands destroyed on the American, Bear, and Yuba rivers, and that the wide-spread destruction of lands on those rivers has been caused by the same agencies that are now at work on the Cosumnes river, and that the destruction of the lands along the last-named river is just commencing; that if defendant's mines continue to be operated as in the past the complete destruction of all the bottom lands along said Cosumnes river will follow in a short time.

That he again visited the mines of defendant, The Amador and Sacramento Canal Company, on ——— of this year, and is well ac-

quainted with the mines of said company. That the said defendant has acquired the possession of and claims to own a large tract of mineral land at a place called Hill Top, in Sacramento county; that the mining ground of said defendant is situated about 175 feet above the level of the Cosumnes river, and consists of red earth, gravel, sand, and cobble-stones, readily disintegrated by water and powder; that from the headwaters of the Cosumnes river the said defendant, by means of ditches, flumes, and pipes, has conducted to its mining ground a large quantity of water, exceeding in measurement 1,000 miners' inches. It has also fully equipped its mine with iron pipes, flumes, reservoirs, tail-races, giants, and the other appliances necessary to carry on a first-class hydraulic mine. Its debris is dumped into the Cosumnes river. At that time—that is, in 1883—
42 the said defendant had deposited in Cook's gulch over ten millions of cubic yards of tailings, consisting of fine gravel and slickens.

That at the last time he visited the mines of the Amador and Sacramento Canal Co., in this year, he found the mines in operation, there being used about 1,400 inches of water, a portion of which was used as backwater, and the balance was directed through monitors against the bank. He also examined the Cosumnes river immediately above, at and below its junction with Cook's gulch, to ascertain the effect upon it of the deposit therein of debris from the mines of the said company; that the water was muddy, with debris coming from the hydraulic mines above, but was increased by the deposit of debris from the mines of the said company; that in the last two years the said company has mined and washed away a large quantity of its mining ground.

That defendant H. S. Byam, at the time of affiant's visit in this year, was engaged in operating a mine at Hill Top, and the water charged with debris from his mine, after passing through Cook's gulch, reached the Cosumnes river. The very heavy material was retained in Cook's gulch, but the matter carried in suspension by the water passed into the Cosumnes river. There has, in the last two years, been a gradual increase in the height of the bed of the river, caused by the deposit therein of hydraulic mining debris, and is constantly increasing.

That the Amador and Sacramento Canal Company sells its water to other miners working by the hydraulic process at Hill Top,
43 on the Cosumnes river, and that when the water used by said company reaches its mines at Hill Top it is already heavily charged with debris, so that, if no earthy matter was deposited in the river from the mines of said company, the placing of such muddy and debris-ladened water by the said company in the said river, would and does do great injury to the river bed and the farming lands along its banks, which would not happen if the water did not reach the river.

Defendant Martin Welch was operating two monitors on his claim, and was using 200 inches of water obtained from the ditch or canal of the said Amador and Sacramento Canal Company. His claim is situated immediately north of the Hill Top mines. He

discharges his material into Cook's gulch, below the dump of the Amador and Sacramento Canal Company's mines, and the larger portion of the fine debris from his mine passes into the Cosumnes river. Affiant is informed and believes, and so states, that James Gallogly, one of the defendants herein, is interested with said Martin Welch in ownership and operation of said hydraulic mine.

That the mining ground around Hill Top contains a very small quantity of boulders or the larger stones, but the greater portion thereof consists of sand, clay, red earth, gravel, pebbles, and cobbles, and the damage done to the Cosumnes river has been done by the deposit therein of the finer material.

That some portions of the heavier stones when washed
44 from the banks and exposed to atmospheric influences from the dumps disintegrate and become fine sand. The Cosumnes river, in the lower part of the Sacramento valley, has a very light grade, and the result is that the bed becomes filled more rapidly than if the grade was heavier.

Affiant further says that he is familiar with the system of mining known as hydraulic mining, and that said system is correctly described in the fourth paragraph of the bill herein, and that the mines of the Amador and Sacramento Canal Company, H. S. Byam and Martin Welch, are worked by such process.

That it is impracticable to protect the lands along the Cosumnes river from overflow by the erection of levees as long as hydraulic mining is permitted on said river, but that if the defendants should be restrained from using the bed of said river as a place for the deposit of tailings from their mines the water of said river would soon become pure and clear, and would begin to scour out and carry away the mass of tailings deposited in said river bed. The result would be that in a few years the Cosumnes river would regain its former condition of a narrow channel between high banks; that the value of the mines and mining claims and their appurtenances of the said defendants exceeds the sum of ten thousand dollars, and that the matter in dispute in this action, exclusive of costs, exceeds in value the sum of ten thousand dollars, and that if the defendants are not restrained from prosecuting their several mining works the damage that the lands of complainant will sustain will exceed the sum of one thousand dollars.

45 That when the debris is deposited upon farming lands there follows a dense growth of willows.

The land so covered will grow willows and nothing else of value.

J. C. PIERSON.

Subscribed and sworn to before me this 5th day of September, 1885.

[SEAL.] ROBT. T. DEVLIN,
Notary Public, Sacramento Co.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

Affidavit of George O. Bates.

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

STATE OF CALIFORNIA, *County of Sacramento:*

George O. Bates, being first duly sworn, deposes and says: That he has lived in the county of Sacramento since the year 1857 and is at the present time a member of the board of supervisors of
46 said Sacramento county; that he is well acquainted with all the lands in Sacramento adjacent to the banks of the Cosumnes river and knows the land of complainant described in the complaint; that the complainant, George Cashman, is the owner thereof, and that he and those under whom he claims and derives title for more than the twenty years last past have been, and complainant is now, in the actual and adverse possession thereof, claiming to own the same as against the whole world.

Complainant's land consists of about seven hundred acres, and is very nearly distributed into two square sections of bottom land and upland. All of said tract of land, except where it has been injured by hydraulic mining debris, is well adapted to raising all the staple crops of this State. It is situated on the north bank of the Cosumnes river, about twelve miles from its mouth, and extends for about half a mile along the river. The bottom land of the complainant would be worth, were it not injured by hydraulic mining debris, at least $150 per acre. It was rich and highly productive alluvial land, capable of producing corn, wheat, and all the valuable agricultural staples of the State. Complainant's upland is not in its general elevation more than from fifteen to thirty feet above his bottom land. The improvements on complainant's land consist of a stable, a dwelling house, a hay barn, a well, and the usual out-houses, the total value of which is probably from $2,500 to $3,000. Although complainant has received large damage in the past, the damage which his said lands will sustain in the future, if the defendants
47 shall not be restrained from prosecuting their mining operations, will exceed the sum of one thousand dollars.

The bed of said Cosumnes river has, since the commencement of hydraulic mining, been filled up throughout its whole length with mining debris to depths varying from ten to thirty feet. The rate of filling in the channel of the Cosumnes river, below the places where the mines of the defendants dump their tailings to a great distance below the lands of complainant, has increased most rapidly in the last three years; that until the Cosumnes river was affected by the deposit therein of hydraulic mining debris, from the mines of the defendants, the said river ran in a well-defined channel in crossing the Sacramento valley, and its banks were high enough to protect the bottom lands of its margins from overflow. In summer

the water was perfectly clear, and it was sufficiently pure at all seasons of the year for household, stock, and farm uses, and for the purposes of irrigation.

A large quantity of complainant's bottom land has in the last three years been covered with sand from the mines of the defendants. Said deposits are each year increasing in depth and extent. In several places above the lands owned by complainant, the channel of the river, having become choked and filled with the said mining debris, has departed from its old bed and rushed over complainant's land. By doing so it has torn it up in places and made great furrows and gullies in it. In other places it has left large deposits of sand, destructive of all crops there being.

48 That when this debris is deposited upon land there comes after it a dense growth of willows; that it is impossible to raise any kind of crop in this debris; that affiant has lived for twelve years on said Cosumnes river, about a mile and a half or two miles from complainant's land; that he is well acquainted with the efforts made by complainant and the other riparian owners to protect their lands from overflow by the erection of levees; that complainant has erected high and expensive levees to protect his lands from overflow, but the fill in the river has increased so rapidly in the last three years, and is, by reason of the deposit in the channel of the Cosumnes river, from the deposit therein of hydraulic mining debris from the mines of the defendants, so constantly and rapidly increasing, that the levees so erected have been and are insufficient to protect complainant's lands from overflow; that it seems almost impossible to get levees high enough to protect the lands as long as defendants are permitted to dump their debris into the Cosumnes river; that the plowing and tilling of said lands along the Cosumnes river are unduly postponed by reason of the water remaining thereon till very late periods in the year. If hydraulic mining should cease, the water of said river from the source down to and past complainant's lands would be reasonably clear and thoroughly adapted to household, farm, and animal uses. But at the present time and for several years last past the water of said river is and has been so foul that it is unfit for any useful purposes whatever. The earthy and sedimentary matter deposited in

49 said river comes from the mines of the defendants, and it is so mixed that it is impossible to tell which portion comes from any particular mine. Complainant's ranch is worth about $30,000. A portion of it has already been irreparably injured, but the greater portion thereof, while injured to some extent, would, if the defendants were restrained from depositing the debris from their mines into the Cosumnes river, be good and valuable land; but the whole thereof is threatened with destruction, and if the defendants are permitted to use the said river as a place for the deposit of their tailings it is only a question of time when the whole of it will be utterly destroyed.

If the waters of the Cosumnes river were not corrupted by use in hydraulic mining, it would cease to make deposits of sand, earth, and slickens and would cut out and transport away its accumulated

deposits. As a result, the said river, through its valley division, would, in a few years, be restored to its former and original condition of a narrow and deep channel with a hard bottom and pure water running therein. In a comparatively few years after this commenced, the portions of the lands of the complainant now so badly injured would regain, through improved drainage and fertilization from rapidly decaying vegetation, most of its former usefulness. If the defendants are not restrained from depositing their tailings into the Cosumnes river, the complainant will not be able much longer to cultivate or reside upon any of his said land. He will be compelled to abandon his farm, and the land now
50 owned and occupied by him will be covered with sand, clay, and slickens, and transformed into a worthless willow and cottonwood swamp, over and through which Cosumnes river will run at random.

GEO. O. BATES.

Subscribed and sworn to before me this 5th day of September, 1885.

[SEAL.] ROBT. T. DEVLIN,
Notary Public, Sacramento County.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

Affidavit of Geo. W. Hancock.

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR & SACRAMENTO CANAL CO. *et al.*, Defendants.

Geo. W. Hancock, being first duly sworn, deposes and says: That he is one of the directors of the State Agricultural Society of the State of California; that he is a farmer by occupation and resides in Sacramento county, California, and has a farm on the Cosum-
51 nes river, in Sacramento county, consisting of 400 acres, more or less; that he has resided in Sacramento county for twenty-five years, but at times has been absent, on business, in other parts of the State, and for the last twenty years has been familiar with the Cosumnes river and the land adjacent to its banks; that when he first knew the river it ran between high banks in a distinct and well-defined channel. The banks of the river at that time were from twenty to thirty feet higher than the bed of the river; that affiant cannot exactly state when the Cosumnes first began to be affected by the deposit therein of hydraulic mining debris, but knows that during the last three years the deposit therein has been constantly increasing; that affiant is well acquainted with the premises of George Cashman, the complainant, described in the bill of

complaint herein; that a very large quantity of said Cashman's bottom land has in the last three years been covered with sand from the mines of the defendants, and that the effect thereof is to injure said lands almost irreparably; that said deposits on his said lands are each year increasing in depth and extent; that probably 175 or more acres of complainant's bottom land, where three years ago he raised a large and profitable crop of corn, is now covered with sand and debris coming from the mines of the defendants, this deposit averaging from three to eight feet in depth; that by reason of the channel of the Cosumnes river above the premises of complainant becoming choked and filled with mining debris the water of the river at its high stages leaves its old channels to seek new ones; that as a result
52 it rushes like a torrent over complainant's land and in places tears it up and creates in it great furrows and gullies. In other places where its current was not so strong it has left huge deposits of sand and destroyed such crops as happened at the time to be in existence; that another effect of the overflow of complainant's land is that such part of it as could be tilled has been rendered incapable of cultivation till very late periods in the year; that were hydraulic mining to cease on the Cosumnes river the river would begin to scour out its channel and remove the deposits of sand and debris therein; but that if the defendants be allowed to use the beds of Cosumnes river as a place for deposit of the tailings from their mines, it will only be a short time when the remainder of complainant's land now capable of cultivation will be destroyed and rendered unfit for cultivation or habitation.

GEO. W. HANCOCK.

Subscribed and sworn to before me this fifth day of September, 1885.

[SEAL.] ROBT. T. DEVLIN,
Notary Public, Sacramento County.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

53 *Affidavit of James Galloway.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

James Galloway, being first duly sworn, deposes and says: That he is an attorney-at-law by occupation, and has resided in California since August, 1849; that he was formerly associate county judge of Yuba county; that he commenced mining on the third day of September, 1849, on the headwaters of the Cosumnes river, at a place nearly opposite Shingle Springs. At that time there was no hy-

draulic mining practiced in California. In early days the water of the Cosumnes river was pure and clear, and the mining done by rockers did no injury to the water—made no impression upon it. The banks of the river were high and the river had a clear-cut, well-defined channel in which it ran. The Cosumnes river rises high in the summit of the Sierra Nevada Mountains and pursues a general westerly course through deep defiles and rocky cañons until it enters the Sacramento Valley. Its grade in its mountain division is at least twenty feet to the mile. Judging from what affiant knows of other streams, he says that its grade in the valley
54 division is about six inches to the mile. The Cosumnes river is subject to heavy freshets during the rainy season of each year, and it remains very high in the spring of the year and during the rainy season. Before the commencement of hydraulic mining on its headwaters the water of Cosumnes river could be and was used for household, stock, and farm uses, and for the purposes of irrigation; that affiant has mined himself by the hydraulic process in Sierra county for about five years, during the seasons when hydraulic mining could be practiced. Hydraulic mining, as it is practiced in the State of California, is a mode of mining for gold by which great banks of earth and gravel usually composed of streaks containing gold enough to pay for washing and streaks which do not are washed away. In other words, it may be described as a process by which large banks of non-auriferous earth are removed for the purpose of reaching streaks that will pay. The non-paying strata exceed in cubic contents those that do pay. In order to remove the earth more easily the earth is loosened and shattered by large blasts of powder. The earth is then washed into sluices and flumes, and keeps on flowing until it reaches the natural water courses. The water used in loosening the earth is discharged from pipes with great force and velocity against such banks of sand and gravel by a heavy water-pressure varying from one hundred to two hundred and forty feet or more. The gold is then separated from the earth, sand, and gravel by the action of the water, and finds a lodging place in pavements, sluiceways, and flumes. The
55 solid material, which consists of sand, clay, pebbles, cobblestones, and boulders, is washed down into the natural water courses and rivers throughout their whole extent. The stream carries the lighter portions currently with it. The heavier portions are rolled along the bottom with various velocities, depending upon the volume and force of the current. In the movement of such heavier portions they come in contact with each other, and by this contact are reduced to smaller fragments until the greater part of it is converted into fine sand. Its disintegration is accelerated by coming into contact with atmospheric influences. When hydraulic mining debris is deposited on farming lands it destroys vegetation and renders them almost, if not entirely, unfit for cultivation. By reason of the mountains being so much higher than the valleys most, if not all, the earth washed out by the hydraulic process reaches the valleys; that nearly the same amount of gold could be obtained from the hills by tunnelling.

JAS. GALLOWAY.

Subscribed and sworn to before me this fifth day of September, 1885.

[SEAL.] ROBT. T. DEVLIN,
Notary Public, Sacramento County.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

56 *Affidavit of L. H. Fassett.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

L. H. Fassett, being duly sworn, deposes and says: That he is a member and chairman of the board of supervisors of Sacramento county, and has lived in said county for thirty years; that he saw the Cosumnes river for the first time in 1857. At that time the river ran in a deep channel, between very high, steep banks—the banks even so high that you could not get down to the river, and, except in a very few places, the banks would have to be cut down to enable one to reach the river so as to cross it. The land on either side of the river was rich alluvial soil, highly productive, and capable of raising all the valuable crops of the State. Land of this kind, were it free from injury by hydraulic mining, would be worth to-day $150 per acre. The upland was also good, valuable land, though, of course, not so valuable as the land along the banks, called bottom land.

57 At the present time most, if not all, of this valuable bottom land is covered with sand and debris from the mines of the defendants; that the rate of filling in the Cosumnes river has increased most rapidly during the last three or four years; that after the deposit of sand and slickens upon this land there comes a dense growth of willows; that above the premises of complainant the channel of the said Cosumnes river becomes choked and filled, and from this cause the water leaves its old channels and rushes with torrential force over the lands adjoining the banks, including the lands of complainant, and in some places tears it up and makes great furrows and gullies in it. In other places, where the current has become deadened, it leaves deposits of sand, which destroy such crops as may be covered thereby. Another consequence is that the lands of complainant and other adjacent owners are covered with this debris-ladened water for such a length of time that the plowing and seeding of such land as could be tilled is unduly postponed; that in affiant's opinion the land of complainant has, by the deposit on it of hydraulic mining debris, lost half its value, or more, and the rest of it is threatened with destruction.

If the defendants should cease hydraulic mining the water of Cosumnes river would become clear, and would be adapted to household, farming, and animal uses. One result of this change would be that the clear water would soon cut out for itself a new channel, and would gradually remove the debris deposited in the river bed. The owners along the river have been endeavoring to protect their lands from overflow by the construction of levees, but so far have
58 been unsuccessful. In a short time, if the river is subjected to the same injury in the future that it has received in the past, the waters of said river, charged with hydraulic mining slums, sand, and debris, will depart from that channel and flow at random over complainant's lands. If hydraulic mining should be stopped, affiant believes that a portion of the lands now so injured would, through improved drainage and fertilization from rapidly decaying vegetation, regain most of its former value.

L. H. FASSETT.

Subscribed and sworn to before me, this fifth day of September, 1885.

[SEAL.] ROBT T. DEVLIN,
Notary Public, Sacramento County.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

Affidavit of Joseph Sims.

STATE OF CALIFORNIA, *County of Sacramento:*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

Joseph Sims, being first duly sworn, deposes and says:
59 That he is a farmer by occupation and has known the Cosumnes river since December, 1848. At that time, although it was in the winter, the water was perfectly clear; the banks of the river were high, and the river ran in a narrow and well-defined channel; the surrounding lands were not subject to overflow, and the bottom land along the banks of the river was rich and highly fertile. When hydraulic mining commenced the river became filled up with mining debris, and the bed soon became higher than the old banks, and the owners along the banks, in order to protect themselves, were compelled to build levees, but these levees are insufficient to protect their lands. At the present time the water of the river is foul and so heavily charged with running debris from the defendant's mines as to be unfit for drinking or other purposes, and has been gradually growing worse in the last three years, and the evil will continue to grow in the future unless the defendants be restrained from using the river as a place for the deposit of their debris from their mines.

JOSEPH SIMS.

Subscribed and sworn to before me, this fifth day of September, 1885.

[SEAL.] ROB'T T. DEVLIN,
Notary Public, Sacramento County.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

60 *Affidavit of Alex'r Dunn.*

STATE OF CALIFORNIA, *County of Sacramento:*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR & SACRAMENTO CANAL CO. *et al.*, Defendants.

Alexander Dunn, being first duly sworn, deposes and says: That he has been deputy sheriff of Sacramento county; that he has known the Cosumnes river for the last twenty-one years; that when he first knew it it ran in a deep and well-defined channel between high banks which protected the surrounding lands from overflow. At that time the water of the river was clear and was used for drinking purposes; that since the commencement of hydraulic mining in the headwaters of the river the bed of the river has been gradually filled up with mining debris to such an extent that those owning land on the banks have been compelled to build high levees at a great expense and have not even by this means been able to protect themselves from injury; that twenty years ago the land now owned by complainant was rich, highly productive land, on which there was not the slightest deposit of mining debris, but that now a large portion of it has been covered with debris to such an extent
61 as to render it valueless; that the deposits in the river are increasing each year, and the quantity of land being injured thereby is constantly increasing; that the water of the Cosumnes river is now and for at least three years last past has been by reason of the deposit therein of hydraulic mining debris unfit for animal or domestic use or for the purposes of irrigation.

ALEXANDER DUNN.

Subscribed and sworn to before me, this fifth day of September, 1885.

[SEAL.] ROB'T T. DEVLIN,
Notary Public.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

Affidavit of O. Sanders.

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

O. Sanders, being first duly sworn, deposes and says: That
62 he is a farmer by occupation, and has resided in Sacramento county since 1849, and has been familiar with the Cosumnes river since that time. The Cosumnes river formerly ran in a narrow and well-defined channel between high banks. Its water was clear and pure, and was uncontaminated by any foreign substance, and was as good drinking water as could be found anywhere. The land along the banks of the river was the best kind of bottom land, and was capable of producing the valuable agricultural products of the State. When hydraulic mining commenced the river began to get foul. The damage done to the river has been gradually increasing. The bed of the Cosumnes river has been filled up to a depth of at least twenty feet. Once there was a bridge built—about 1862—across the Cosumnes at the crossing at Dayton's Ranch, in said county of Sacramento. The bridge was carried away by a freshet. The foundation for the bridge was probably from ten to fifteen feet above the bed of the river, but so great has been the fill in the river since that time from the deposit therein of tailings from the mines of the defendants that said foundation is now completely covered. Two or three years the foundation was visible, but now *they are* completely covered, thus showing that in the last two years there has been a great increase of deposits in the river from the mines of the defendants.

On September 3, 1885, the water in the river, when affiant saw it, was thick with mud. The damage done to the lands along the
63 banks of the river has been constantly increasing in the last three years, and is constantly increasing. It seems as if the defendants, fearing that they would be stopped, are working at double force; that during the last year he has seen the mines of the Amador and Sacramento Canal Co. in full operation six or eight times; that is, every time he has been near their mines. Ther water they used in mining, heavily charged with earthy matter, found its way into the Cosumnes river; that the persons owning lands on the river have been, for a number of years, endeavoring to protect their lands from overflow by the erection of high and expensive levees, but all their efforts have been useless. They have not been able to keep their levees high enough to protect their lands, When they think they have their levees high enough there comes a fresh supply of debris, which raises the river. The levees are about as high now as they can be made, and unless the deposit of

debris in the river be stopped all the lands along the river banks will be completely ruined. The water in the river, since it has been filled with debris, is unfit for any kind of use.

OLIVER SANDERS.

Subscribed and sworn to before me this fifth day of September, 1885.

[SEAL.] ROBT T. DEVLIN,
Notary Public.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

64 *Affidavit of C. A. Pearson.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

C. A. Pearson, being first duly sworn, says: That he has lived in Sacramento county ever since 1853, and up to 1877 was farming in that county, but since that time has resided in Sacramento city; that he has known the Cosumnes river since 1854. At that time the water was clear and as good as any water in the State. Its banks were high, probably twenty feet higher than its bed. The land along its banks was rich and highly productive. The banks were high enough to restrain the water, and the adjacent lands were not subject to overflow. When hydraulic mining commenced on the headwaters of the river the river began to fill up with sand and debris. The river, in its valley portion, has a very small slope to the mile, and the debris coming from the defendants' mines has filled up the bed of the river. Before the commencement of hydraulic mining the water of the river was first-class drinking water, but after the beginning of hydraulic mining on its headwaters
65 the water became so foul and charged with sedimentary matter as to be unfit for any purpose.

That all the bottom land along the Cosumnes river was at one time capable of producing, in large quantities, corn, wheat, and all the agricultural staples of the State, and were it not for the damage done to it by hydraulic mining debris, and the damage feared in the future from the same cause, would be worth, at least, $150 per acre.

C. A. PEARSON.

Subscribed and sworn to before me this fifth day of September, 1885.

[SEAL.] ROBT T. DEVLIN,
Notary Public.

(Endorsed:) Filed September 10th, 1885.
L. S. B. SAWYER, *Clerk.*

Affidavit of W. F. McCraken.

STATE OF CALIFORNIA, }
County of Sacramento, } ss:

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

W. F. McCraken, being first duly sworn, says: That in 1872 there was a dam across the Cosumnes river at or near McCraken's bridge. At that time the top of the dam was about four
66 feet above the water; at the present time it has been covered up, and there is now a deposit of mining debris on it of about six feet; this has been a fill of ten feet since 1872; the most of this has occurred recently. The damage to the river from the tailings from the mines of the defendants is constantly increasing and has increased most rapidly in the last three years. It has been necessary to raise the McCracken bridge several feet; that affiant does not build permanent fences on his land because he expects that the fences will be carried away by overflows. If the defendants should cease mining there would be no damage in the future. During the last three years the fill in the Cosumnes river has increased in depth from two to five feet, in addition to the depth of material there before, and the bed of the river will continue to become filled up at that, and even at a greater rate in the future, if the defendants be allowed to continue their mining operations. The land covered with hydraulic mining debris is unfit for cultivation; that all the farmers and land owners along the Cosumnes river are constantly engaged in discussing levees and seeing that their levees are as high as their neighbors, so that no one shall *not* have an advantage over another by reason of receiving the waters thrown upon him by the higher levee of the one across the river.

W. F. McCRAKEN.

Subscribed and sworn to before me this fifth day of September, 1885.

[SEAL.] ROB'T T. DEVLIN,
Notary Public.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

67 *Affidavit of R. W. Parker.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

R. W. Parker, being first duly sworn, deposes and says that he resides in the city of Sacramento and is a storekeeper by occupation, and at various times up to 1874 was engaged in mining in various counties of the State; that during the last year he made two visits to the Cosumnes river and its head-waters for the purpose of ascertaining who were working by the hydraulic process on such river; the last of these was made from July 16th to July 23d of this year, and the first from March 16th to March 31st of this year.

At the mines of the Amador and Sacramento Canal Company, one of the defendants herein, situated at or near Michigan Bar, being about a mile southwest therefrom, in Sacramento county, he found on the first occasion two monitors in full operation. The monitors were about one hundred feet apart. There were about twelve or fourteen men engaged in different operations about the mine. They, on the last occasion, were working one monitor. The earth washed from the banks was carried into Cook's gulch. The sand, earth,
68 pebbles and small stones were carried and found their way into the Cosumnes river. Some of the boulders were restrained by piles of brush, but by being so restrained the grade was increased, thus rendering the descent of the sand, clay, pebbles, and small stones into the Cosumnes river much easier. The banks that were being worked were from seventy-five to forty feet in height, and are composed of red earth, sand, gravel, and pebble stones. There are very few boulders until the base of the hill is reached. The two monitors in March were using from 600 to 800 miners' inches of water. The Amador and Sacramento Canal Co., defendant herein, is the owner of a large ditch, from which it derives its water supply. The ground possessed by the Amador and Sacramento Canal Company is situated about 175 feet above the level of the Cosumnes river, and is composed of red earth, gravel, sand, and cobble-stones, readily disintegrated by powder and water. The ditch owned by the company holds a supply of water exceeding 1,000 inches by miners' measurement. The company has fully equipped its mine with iron pipes, tail-races, flumes, reservoirs, giants, monitors, and the other appliances usually found at first-class hydraulic mines, and had the same in full use and operation when affiant visited the mines in last July. A part of the equipment of said mine consists in a flume or tail-race laid in the lower part of Cook's gulch. Through this gulch all the tailings, debris, and refuse matter set loose in the course of the operation of the mine, with the exception

of the heavier stones, pass into the Cosumnes river. The
69 heavier stones are restrained, as affiant has stated, by means of brush structures, which, while restraining the boulders and heavier stones, do not impede the flow of the other materials.

Defendant H. I. Byam was engaged at this mine in working the same and giving his orders to his men. His mine is situated also at or near Michigan Bar, and the tailings from his mine are discharged into Cook's gulch and thence pass into the Cosumnes river. He gets the water used by him in mining from the Amador and Sacramento Canal Company.

Defendant Martin Welch has ground consisting of thirty acres, which he works by the hydraulic process, situated near Michigan Bar, in Sacramento county. The tailings from his mine pass also into Cook's gulch, and thence pass into the Cosumnes river. He was working his mine in March of this year, but in July, when affiant again visited the ground, did not seem to be working for lack of water, but was prepared to commence working again as soon as he could obtain a sufficient supply of water therefor.

The defendant, Gideon Dunn, has a mine worked by the hydraulic process, situated near and a little west of Forest Home, in Amador county, California. The tailings from his mine are discharged into a gulch that leads into the Cosumnes river and reach the river. When affiant visited the mine he was fixing his pipes to get ready to work as soon as he could get a supply of water. He is prepared with the necessary appliances to conduct his hydraulic mining operations, and intends and threatens to do so. Some of his
70 mine has already been worked out, and the tailings therefrom have been discharged into the Cosumnes river.

Defendant George W. Phillip owns and operates a mine situated at Irish Hill, in Amador county, California, and the tailings therefrom are discharged into Greasewood gulch, and thence into Buckeye gulch, both of which are tributaries of the Cosumnes river, and all the tailings from his mines reach and pass into said Cosumnes river. When affiant visited the mines of said defendant, George W. Phillip, they were in full operation. He had three men besides himself engaged in working. He had one monitor and was using about 200 miners' inches of water. Affiant had a conversation with him, and he said that he was using 250 inches of water, and that he could use 500 inches if he could get the water. The hills he is engaged in working are of the same general character as the Hill Top mines, being about from twenty-five to forty feet in height. The hills are composed of red earth, sand, clay, and small stones. All of the material washed from his mines reaches the Cosumnes river, only the heavier stones being retained in the gulch. He intends to continue his mining by the hydraulic process, and has pipes and the necessary appliances to enable him to do so.

That the defendants, Ira P. Lambing and Henry L. Lambing, own and operate a mine by the hydraulic process at Irish Hill, in Amador county, California, and the tailings therefrom are discharged into Greasewood gulch, and thence into Buckeye gulch, and
71 from this latter are conveyed and carried into the Cosumnes

river. When affiant visited the said mine the said defendants, Ira P. Lambing and Henry L. Lambing, were engaged in operating the same. They had a monitor, using about 200 miners' inches of water, and had a couple of men employed besides themselves in working said mines. Their mine is about a quarter of a mile north of the mine of the defendant Phillip and just across the hill. Their mine consists of the same general character of earth and dirt as that found in the mining ground of defendant Phillip. The Lambings have pipes and the necessary appliances and intend to continue the working of their mine. All the lighter portions of their debris reaches the Cosumnes river. They make no effort to restrain any portion of it, but some of the heavier cobble-stones are retained in the gulch and do not reach the river, but all the rest, including the sand, clay, pebbles, and gravel, passes into the Cosumnes river.

The defendants, Abner T. Hale and Jacob C. Baughman, own and operate a mine in partnership, by the hydraulic process, at Indian Diggings, in El Dorado county, California, and the tailings therefrom are discharged into Indian gulch, a tributary of the Cosumnes river, whence they pass into the river itself. They had a monitor in operation when affiant visited the mines, and used about 300 miners' inches of water under a pressure of 300 feet. Indian gulch is quite long and very steep, and nearly all the material washed from their mine reaches the Cosumnes river. They had,
72 when affiant visited the mine, two men in their employ, besides defendant Hale, all three of whom were engaged in working the mine by the hydraulic process. This mine is also supplied with all the necessary appliances for hydraulic mining, and the said defendants, Hale and Baughman, are now working and intend in the future to work their said mine by the hydraulic process.

Defendant Ball owns and operates a mine by the hydraulic process situated in Indian gulch, about a mile south of Indian Diggings, in El Dorado county, California, and the tailings therefrom are discharged into Indian gulch, and thence pass into the Cosumnes river. When affiant visited said mine the said defendant and Ball, and one other man, were engaged in working the same, and the said mine uses about 100 inches of water by miners' measurement. The debris that reaches the river from this mine consists of sand, clay, gravel, and small stones.

Affiant has not seen defendant Gallogly operating any mine, but from his best information states that in the winter time he buys water from the Amador and Sacramento Canal Company, and uses the same in hydraulic mining, near Hill Top, in Sacramento county, and discharges any tailings from any ground so worked into the Cosumnes river.

That the defendant, Jeremiah Bliss, owns and operates a mine by the hydraulic process, situated about a mile and a half east of Forrest Home, in Amador county, California, and the tailings therefrom are discharged into gulches and cañons leading into and connected with the Cosumnes river, and the same pass into the

73 Cosumnes river. When affiant first visited the mine of said Bliss, he and one other man were working said mine, using one monitor and about fifty-five to seventy-five miners' inches of water.

All of the defendants above named obtain their water supply for working their mines by the hydraulic process from the defendant, the Amador and Sacramento Canal Co., and the said defendant is aiding and abetting the other defendants to commit the nuisance described in the complaint, all of said defendants being citizens of the State of California.

Affiant is thoroughly acquainted with the process of mining called hydraulic mining, and states that the same is correctly described in the fourth paragraph or subdivision in the bill of complainant herein, and that all of the defendants work their said mines by said process; that the water above the hydraulic mining belt of the said Cosumnes river is pure and clear, and begins to get foul when it reaches the discharge from the mines of the defendants.

The deposits of the tailings made by the defendants in Cosumnes river transform the water of said Cosumnes river from clear and pure water into water so foul and putrid that it cannot be used for household, domestic, or farm uses. The mines of the defendants, as above described, are of various magnitudes, and they make varying and unequal deposits of tailings in the Cosumnes river and its tributary streams. These deposits mingle and commingle with each other in the channel of the Cosumnes river immediately below Cook's gulch, and become a mass of undistinguish-

74 able parts, and so flow down the river and upon the lands adjacent to the banks. The bed of the Cosumnes river has, by the sedimentary deposits made therein, become raised to a great height. Each of the defendants has largely and materially contributed to the damage and injury to the bottom lands along the river, including those of complainant. It is an ab olute impossibility to ascertain or prove the proportion of damage done by any one of the defendants to such lands, or to say how much each will contribute to such injury in the future; but each intends to prosecute his, their, or its mining operations in the future as has been done in the past. If the Cosumnes river were not corrupted by hydraulic mining it would no longer make deposits, but would cut out and transport away its accumulated deposits. If hydraulic mining should cease the Cosumnes river would, in a very few years, regain its original condition of a deep channel with a hard bottom and pure water running therein. The defendants, and each of them, as affiant has learned from conversations held with some of them, severally claim an easement to flow and deposit upon the lands along the river their mining tailings of debris, and they refuse to discontinue their mining by the hydraulic process; that the value of the mines and mining claims of defendants exceeds the sum of ten thousand dollars.

Affiant further says that his experience in mining has made him familiar with the scouring capacity of water; that the power of the Cosumnes river to scour out and remove the tailings or debris

75 deposited in the channel of said river is governed by the depth and purity of the water flowing between its banks. The power of the water to carry off said deposits is increased by the purity and depth of the waters flowing between the banks of the river; but when the depth of the water is decreased and the water is charged with earthy matter its power to scour out its channel is proportionately decreased. If the water of the Cosumnes river was pure and clear the channel of said river would commence at once to scour out and carry off the debris deposited therein. Affiant further says that in his opinion the matter in dispute in this action, exclusive of costs, exceeds in value the sum of ten thousand dollars.

R. W. PARKER.

Subscribed and sworn to before me this fifth day of September, 1885.

[SEAL.] ROBT T. DEVLIN,
Notary Public, Sacramento County.

(Endorsed:) Filed September 10th, 1885. L. S. B. Sawyer, clerk.

76 *Aff'd'v'ts on Order to Show Cause of Seth Loveless, B. M. Cope, and John Rohlert.*

STATE OF CALIFORNIA, }
County of El Dorado, } *ss.:*

In the Circuit Court of the United States, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants.

Seth Loveless, B. M. Cope, John Kohlert, each being duly sworn, deposes and says: That he resides in the county of El Dorado; that he has resided near Indian Diggings and near the mining claim of said defendants, Hale, Baughman, and Ball, for about seventeen years, and much of the time has been engaged in mining in the vicinity of the said mining claims of said defendants, Hale, Baughman, and Ball, in said El Dorado county; that he is now and has been for seventeen years last past well acquainted with the width, grade, and natural condition of the south fork of the Cosumnes river and all of its tributaries, and during all of said time

77 has been familiar with the mining operations carried on on the south fork of the Cosumnes river, at all points above the junction of the middle and south forks of said river, which said junction is above "Yomet," about 15 miles above Michigan bar, in Sacramento county, and about 6 miles above the dam of the Amador and Sacramento Canal Company, on said river, which is the head of said company's canal; that said south fork of the Cosumnes, from a point eight or nine miles above the said "Yomet" (or "forks of the Cosumnes," as it is sometimes called, where there is a wire bridge across said Cosumnes), the bed of said south fork is quite flat or of but little grade; that for a distance of several miles on said river,

from about one-half mile below "Bridgeport" up said south fork, are cultivated many ranches (Perry's ranch, Cooper's ranch, Burton's ranch, Votah's ranch, Tyler's ranch, Farnsworth's ranch, & others); that for several miles through said ranches said river is in bottom land from fifty to six hundred miles wide; that said "Indian Diggings creek," and not "Indian gulch," as plaintiff terms it, heads in the Sierra Nevada mountains, not more than one-half mile from and above said mining claims of said Hale, Baughman, and Ball, at said "Indian Diggings;" that said "Indian Diggings creek" runs
78 southwest and empties into "Scott's creek," or, as it is sometimes called, the north fork of the south fork of the "Cosumnes river," about two or two and a half miles from its source and from the claim of these defendants; that said "Scott's creek," with the waters of said "Indian Diggings creek," thence runs southwest, and empties into said south fork of the Cosumnes river, about one-half mile above said "Bridgeport," a distance of fourteen or over miles from the mining claims of these defendants, Hale, Baughman, and Ball; that all the way along the bed of said Indian creek and Scott's creek to its junction with said south fork (except in one place, where a ledge of rock comes down on either side of said "Indian Diggings creek," leaving a channel of only from 8 to 12 feet wide for a distance of about 200 feet) is on an average of one hundred & 23 feet wide, having a fall or grade of only between 4 & 5 inches to the rod by measurement.

That said "Indian Diggings creek" has formerly been thoroughly mined and remined from its source to where its waters empt*ies* into said "south fork," and in many places from bank to bank on said creek it is more than 300 y'ds wide and very flat, as I have before stated; that the claims of said Hale, Baughman, and Ball are situated on the west bank of said "Indian Diggings creek," and
79 does not carry nor is not composed of more than five per cent. of gravel; that what gravel there is from all their workings does not run and has not run more than one mile below the point where the same is dumped into said "Indian Diggings creek." This I knew personally to be the fact; that the balance of the earth in said claims over said five per cent. of gravel is a whitish or gray substance with very little sand, and settles along the bars and beds of said creek, mostly before it reaches said "south fork;" that on said "Scott's creek," about nine miles below the claims of said defendants, Hall, Baughman, and Ball, on said Scott's creek, is a dam and the head of a ditch known as the "Tyler ditch," at which said dam is a "sand box" which is two feet wide, five feet deep and eighteen ft. long, constructed to collect the sand and gravel which flows down said "Indian Diggings creek" and Scott's creek and the ravines which empty into said "Indian and Scott's creeks" above said dam; that said "Tyler ditch" takes up all of the waters which flow down said Indian and Scott's creeks and takes it over south to said "south fork," a distance of three miles, where it empties said waters into said "south fork;" thence said waters are mingled with the "south fork's," a distance of one-fourth of a mile to a dam and ditch, which takes up all the waters of said Indian, Scott's, and

south fork, known as the Simpson ditch;" thence the same
80 runs in said ditch to Plymouth, Amador county, California, where the same is used, in connection with other water hereafter mentioned, to propel the mining and milling machinery of the Plymouth Consolidated Mining Company's quartz mines at said Plymouth; thence said waters are discharged into Dry creek, near Dry Town, into said Amador county, thence down said Dry creek into the Moquelumne river, a long distance below & south of the lands of said plaintiff, as affiant is informed and believes; that said Hale, Baughman, and Ball are mining by hydraulic power in their said claims; but affiant says that said defendant only used a seven-inch hydraulic pipe in their claims and not to exceed one hundred and twenty-five inches of water, miner's measure.

That said Hale & Baughman purchase the water so used in their said claims of the Plymouth Consolidated Mining Company aforesaid, and it is sold to them by said company for only one hundred inches.

That said Plymouth Consolidated Mining Company have another and second dam and ditch on the said "South Fork," below the said junction of "Scott's and Indian Diggings creeks" with said "South Fork," about four or five miles, which takes up all of the waters of said "south fork," and conveys the same to the quartz mines of said Plymouth Consolidated Mining Company at said Ply-
81 mouth, which escapes from or is not taken up by the dam and ditch first above mentioned, together with all the sediment which flows down to the same from defendants' claims, which water, after defendants have used it, is used again by said company.

That said two ditches take up and convey to said Plymouth all of the water and sediment of said Indian, Scott's, and South Fork, which flows in the same above said dams and ditches.

That the sand-box aforesaid at the said first dam only fills with sediment from twice to three times a week. All that passes the first dam from above is caught in the said second dam (which has no sand-box), and flow to said Plymouth as aforesaid.

That the water which flows to both the first and second said dams takes all the tailings and sediment which flows from the mining claims of these defendants, which is all taken up by said ditches and in them taken to said Plymouth as aforesaid, except in times of freshets, for a few weeks during each winter.

That during all the spring, summer, and fall months the water below the lower said dam on said South Fork is clear, and is never adulterated by the mining of these defendants or any one.

It is not true that either of these defendants have ever obtained any water for their said mining operations of or from the Amador or Sacramento's Canal Company's canal, as stated by complainant's witness. And affiant says that the canal of said Amador and
82 Sacramento Canal Company heads more than twenty miles below the said mining claims of these defendants, and that the lowest point on said mining claim is more than 2,000 feet above the head of said canal.

That all of the water these defendants have used, or can use, is

purchased from said Plymouth Consolidated Quartz Mining Company.

That these defendants, Hale, Baughman & Ball are not aiding or abetting, and never have aided or abetted, any of the other defendants in this action or any one else in committing the nuisance complained of in this action, or any nuisance, or contributed to the commission of any nuisance or injury whatever by their said mining, nor have they contributed to any injury, damage, or nuisance whatever by their said mining operations.

Affiants further say that the waters of said "south fork" of the Cosumnes river, below the lower dam and ditch above mentioned, have never been adulterated by any mining on said "Indian Diggings creek" since said dam and ditch have been constructed; that there is a regular watering place on and out of said ditch, about ¾ths of a mile from where it is taken from said "south fork," for teamsters; that the said water is clear, or nearly so, in said ditch, and suitable for domestic use; that the diagram attached
83 hereto is practically correct, and correctly shows "Indian Digging creek," Scott's creek, and the "south fork," and the other points as they therein exist.

SETH LOVELESS.
B. M. COPE.
JOHN KOHLERT.

Sworn to and subscribed before me this 27th day of October, A. D. 1885.

[NOTARIAL SEAL.]

GEO. G. BLANCHARD,
Notary Public.

(Here follows diagram marked p. 84.)

85 *Aff'd'vts of G. W. Smith and J. D. French.*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEO. CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants

STATE OF CALIFORNIA, }
County of El Dorado, } *ss.:*

G. W. Smith and J. D. French, — being duly sworn, deposes and says: That he is over twenty-one years of age; that he resides near Indian Diggings, in El Dorado county, State of California; that he is by occupation a miner; that he is well acquainted with the mining claims of defendants, Hale, Baughman, and Ball, and for about one year last past he has been mining on Indian Diggings creek aforesaid, about one mile below where said Hale, Baughman, and Ball dump the tailings from their said mines into said creek; that he used in his said mining the same water used by said the above-

named defendants in their said claims after they had first
86 used it there for their mining; that none of the gravel came down said creek from said creek as far as affiant's said claim; that, while said water was muddy, it was suitable for his mining; that his said mining was in the bed and banks of said Indian Diggings creek; that he has heard read the affidavit of Seth Loveless, B. M. Cope, and John Kohlert, and is well acquainted with all of the facts therein stated; that he personally knows all of the facts stated in said affidavit to be true; that he has worked on the Simpson ditch mentioned in said affidavit, and is familiar with the situation, grade, and general character of said Indian Diggings ditch, Scott's creek, and south fork of the Cosumnes river, and the dams, sand-box, and the two ditches mentioned in said affidavit, and has been for four years last past; that all the facts stated in said affidavits in relation to the same are true.

G. W. SMITH.
J. D. FRENCH.

Subscribed and sworn to before me this 27th day of October, A. D. 1885.

[NOTARIAL SEAL.]

GEORGE G. BLANCHARD,
Notary Public.

87 *Affid'v'ts of A. Ball, G. F. Hale, and H. S. Upton.*

STATE OF CALIFORNIA, }
County of El Dorado, } *ss:*

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

A. Ball, G. F. Hale, and H. S. Upton, each being first duly sworn, on oath deposes and says: That he resides in the county of El Dorado, State of California, and is a rancher and miner by occupation; that he now resides, and has resided for more than two years last past continuously within two miles of the mining claims of Abner F. Hale and Jacob C. Baughman and Aaron Ball, defendants in this action, near Indian Diggings, in said county of El Dorado, and is well acquainted with said mining claims, and each of them, and
88 also with the country surrounding said claims, and well knows the character thereof; that he is now and has long been familiar with the mining operations of said Hale, Baughman, and Ball on their said diggings or mining claims near said "Indian Diggings," and has been familiar with such mining operations of said Hale, Baughman, and Ball in said claims ever since they have been working said grounds and long before; that he is now, and has been for more than four years, engaged in mining in the vicinity of said Indian Diggings, and is now and has been well

acquainted with the manner in which said Hale, Baughman, and Ball have worked their said claims, the same being the mining claims which they, said Hale, Baughman, and Ball, have been enjoined from working; that affiant is, and has been for more than four years, well acquainted with the water supply for working said claims, with fall, amount of water used, the topography of the country for miles around said claim, the amount of mining heretofore done, the fall from Indian creek from where the defendants above named dump the tailings from their said claims into said Indian creek down to where said creek empties into the south fork of Cosumnes river, the distance and fall and lay of ground from the point where the waters of said Indian creek empty into said south fortk of said Cosumnes river to said complainant's premises on said Cosum-
89 nes river described in said complainant's bill of complaint in this action.

Affiant says that said defendants Hall, Baughman, and Ball have been mining by hydraulic process, so called, in their mining claims for about two years last past at said Indian Diggings; that they purchased the water with which they mine, and have all of the time purchased such water, from a mining company owning and operating the quartz mines at Plymouth, Amador county, California; that said defendants Hale and Baughman have at the most used only 125 inches of water, miners' measure; that they contract for and only pay for 100 inches of water; that their Monitor is small and not of the latest approved pattern; that said Indian gulch or creek is fourteen miles long from their, the said named defendants', claim to where it empties into said south fork of the Cosumnes river; that it is not steep, as stated in the affidavit of R. W. Parker; that for a distance of fourteen miles next below the said claims of said defendants Hall, Baughman, and Ball it, the said Indian gulch or creek, has a fall of only four to five inches to the rod, and is at least one hundred feet wide; that the bed thereof has heretofore been mined out, leaving large piles of coarse gravel, which obstruct the flow of tailings; that no gravel of any considerable size passes more than one-half mile below said defendants' claim, which can now be seen and which I have examined
90 and know to be a fact, and that all such gravel passing along said gulch from said claims or otherwise is deposited before going said last-named distance; that the said quartz-mining company at said Plymouth owns the water right and ditches at and in the neighborhood of said claims and run all of the water which said defendants use in their said hydraulic mining to propel the machinery with which the said company operates its said quartz mines at said Plymouth; that said company first conveys said water down said Indian creek, after said defendants have used it in their said mining in the bed thereof into said south fork of said Cosumnes river; that about 4 or 5 miles above the junction at a dam and ditch herein mentioned is a large sand box, which is in size about 2 feet wide, 5 feet deep, & 18 feet long; that said sand box takes up all the sediment and sand flowing from said defendants' said claim as well as from all the natural wash of many miles of gulch and

river bed besides; that from said sand box said water flows into said quartz-mining company's ditch from said south fork to said Plymouth and thence it is emptied into Dry creek and empties into the waters of said Cosumnes river many miles below the lands of complainant; that said sand box only fills from to or three times per week; that the sediment which is run from said sand box with any accumulated water not retained to run into the ditch above described flows on down said south fork about six or eight
91 miles, where said quartz-mining company has another dam on said south fork of said Cosumnes river, and thence by another ditch they take the residue of all the waters of said south fork to said Plymouth to use the same for propelling the machinery by which said quartz mines are operated; thence into said Dry creek as from said first ditch

Affiant says that no gravel reaches said south fork of the Cosumnes river; that the sand which reaches it is caught up in said ditches and is carried away from said south fork; that there is no sand box at said lower ditch of said quartz-mining company, and all the sand which escapes from the ditch and sand box first above mentioned that does not lodge along the bed and bars of said south fork before it reaches the lower or last ditch flows into said lower ditch and on to said Plymouth as aforesaid, and that no sand or sediment, or washing from said defendants' said mining claims, or either of them, passes below the head of said last-mentioned ditch down said south fork, unless it may be occasionally and for a few days at a time only in winter freshets when some water may pass said dam at the head of said last-mentioned ditch, and at such times the quantity passing, if any at all, is very small, and could do no damage; that more sand and sediment flows into said ditches from said south fork other than that which escapes from the mining of these said defendants
92 in their said mines, and which comes down said south fork from other sources, washings, and causes, than that which comes from defendants' said mining. Affiant further says that R. W. Parker, upon whose affidavit the injunction in this cause was obtained against these defendants, is not known at or in the vicinity of said Indian Diggings, and has never mined there nor in the county of El Dorado, so far as affiant can ascertain.

That it is not true that these defendants have ever obtained any water for their said mining operations of Amador & Sacramento Canal Company; that said canal company's canal heads more than 30 miles below the said mining claims of these defendants, and that the lowest point on their said claims is more than 2,000 feet above the head of said Amador & Sacramento Canal Company's ditch or canal; that all the water which defendants have ever used or intend to use never flows into said canal unless it may for a few days or week in winter freshets; that these defendants, Hale, Baughman, and Ball, or any of them, are not aiding or abetting any of the defendants in this action, or any one else, in committing the nuisance described in the complaint of said complainant, or any nuisance or injury whatever; that said defendants Hale, Baughman, and Ball, or either of them, have not at any time contributed to or partici-

pated in, and do not now and will not contribute to or participate in, by the working of the said mining claims in the manner
93 in which they have been working the same, the injury, damage, or nuisance mentioned in said bill of complaint, and that no injury or damage can or will result to the said lands of complainant from such working of said claims by said defendants.

A. BALL.
G. T. HALE.

Subscribed and sworn to before me this 27th day of October, A. D. 1885.

[NOTARIAL SEAL.] GEO. D. BLANCHARD.
Notary Public.

H. S. UPTON.

94 *Aff'd'v't of Jenkerson.*

STATE OF CALIFORNIA, } ss:
County of El Dorado, }

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

A. H. Jenkerson, being duly sworn, says that he resides at Indian Diggings, in El Dorado county, State of California; that he has resided in the neighborhood continuously for twenty-five years; that he is a water agent on the Plymouth Consolidated Mining Company's ditch; that he has been such water agent on said ditch for over four years; that he is well acquainted with defendants Hale, Baughman, and Ball and their mining claims at said Indian Diggings; that as such ditch and water agent he has sold to said defendants above named all the water they have used in mining their claims aforesaid at Indian Diggings since they have been mining them;
95 that all of the water which defendants have ever used in mining their said claims has been purchased from this affiant from said ditch as such water agent; that affiant has only sold to said Hale & Baughman, & which was used in mining their said claims, one hundred inches of water, miners' measure, and to said defendant Aaron Ball eighty inches of water, which was used in his said claim for mining; that each of said defendants use only a seven-(7) inch iron pipe conveying the said water in their said claims respectively; that none of the tailings from the defendants' said mining claims flow down the south fork of the Cosumnes river below the lower dam of said mining company's lower ditch, which is a mile below Bridgeport, on said south fork; that below said dam and ditch, on said south fork, this water is clear for a long distance; that the south fork and Indian Diggings creek, above said lower dam and ditch, is comparatively flat, and from bank to bank wide, and, except in times of freshets, all the water from said streams is caught up

and carried to Plymouth, in Amador county, by means of two ditches which belong to said company, both of which are described in the affidavits of Seth Loveless, B. M. Cope, and John Kohlert.

A. H. JINKERSON.

Subscribed and sworn to before me this 27th day of October, A. D. 1885.

JOHN KOHLERT,
Justice of the Peace.

96 STATE OF CALIFORNIA, } ss:
County of El Dorado, }

I, E. W. Witmer, county clerk and *ex-officio* clerk of the superior court in and for said county, the same being a court of record, having a seal, hereby certify that John Kohlert was, at the time of signing the annexed affidavit, and at the date thereof, an acting justice of the peace in and for said county, duly elected and qualified according to law, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of Placerville, this the 29th day of October, A. D. 1885.

E. W. WITMER, *Clerk*,
[SEAL.] By GEO. H. BURNHAM, *Deputy.*

Endorsed: Filed November 2d, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

97 *Return to Order to Show Cause.*

In the Circuit Court of the United States in and for the District of California, 9th Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR & SACRAMENTO CANAL CO. *et al.*, Defendants.

The defendants, The Amador and Sacramento Canal Company and H. S. Byam, appear in said suit and show cause why a temporary injunction should not be ordered or issued as prayed for in the complainant's bill, as follows:

I.

That the said Cashman was made complainant in said case by collusion of the board of supervisors of the county of Sacramento, State of California, for the purpose of creating a case cognizable under the act of Congress passed March 3d, 1875, entitled "An act to determine the jurisdiction of the circuit court of the United States and to regulate the removal of causes from State courts and for other purposes."

98 II.

That all the facts stated and charged in the plaintiff's said bill of complaint against these defendants and the matters contained in the

several affidavits filed by said complainant are distinctly denied by these defendants.

III.

Because it appears from the whole case made that a proper cause for injunction does not exist.

And these defendants move that this suit be dismissed from want of jurisdiction, and because it is shown that this case is commenced and prosecuted in violation of the provisions of section five of said act of Congress.

McKUNE AND GEORGE,
Solicitors for A. & S. C. Co. and H. S. Byam.

99 *Aff'd'v't Mrs. Ritter.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States, 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants.

Jennie B. Ritter, being duly sworn, deposes and says:

That she is, and for more than four years last past has been, president of the said corporation defendant and its principal managing agent.

That as such managing agent she has been, and is, fully advised of its business and of all transactions in which it has been engaged during that time.

That on the 12th day of September, 1882, one Diggory Hobbs commenced his suit in the superior court in and for the county of Sacramento against the said corporation defendant by filing
100 his complaint therein, a true copy of which is hereto annexed, marked Exhibit A; and thereupon on the same day the said superior court made therein an order directing the issuance of a temporary injunction, which writ was on said day issued, and immediately thereafter duly served on said corporation, a true copy of which writ is hereto annexed, marked Exhibit B.

And thereupon on the — day of October, 1882, the said corporation made its motion to dissolve said injunction, in pursuance of notice of motion thereupon served, which motion was heard on affidavits, and on the — day of January, 1883, was by said superior court taken under advisement, a true copy of which notice is hereto annexed, marked Exhibit "B B."

That on the 5th day of March, 1883, the said superior court decided said motion to dissolve said injunction, and rendered and filed in said suit its opinion, a copy of which is hereto annexed, marked Exhibit C.

That thereupon, and in accordance with said opinion, the said

superior court made and entered its order, a true copy of which is hereto annexed, marked Exhibit D.

That thereupon both parties to said suit appealed from said order to the supreme court of said State.

101 That said appeals were heard in said supreme court, and on the 26th day of November, 1884, the said supreme court rendered its opinion and decision affirming said order so appealed from, which opinion is recorded in the West Coast Reporter, volume four, at page 523, to which reference is made for further particulars.

That about the 1st day of December, 1882, the Amador and Sacramento Canal Company and its lessee commenced to build and immediately thereafter caused to be constructed across said Cook's gulch, at or near the old Gallogly dam, a new dam 300 feet in length of an average height of ten feet, with a base of ten feet, and its top 4 to 6 feet wide, made of a double row of pilings driven firmly into the old or original ground, well braced both in front and in the back, then faced on both sides with one and one-quarter inch plank firmly nailed to the pilings, and then filled and packed between the planking with earth and gravel, which makes it a perfect settling dam. This dam was so constructed that it might be raised from time to time, so as to keep its top above the tailings impounded in it, and the said dam has, in fact, from time to time been raised and kept above the impounded tailings in such manner as to wholly prevent any tailings, sand, or other debris from passing over or through it to the said Cosumnes river.

102 That on or about the 15th day of October, 1882, to make the plan of restraining tailings from the mining works of said corporation defendant effectual, the said Amador and Sacramento Canal Company constructed another dam of brush across said Cook's gulch about 2,400 feet above the Gallogly dam, 4,065 feet from the said river, which brush dam has since been raised, and from time to time extended as emergencies required, until now it is 15 feet high and 550 feet long; that in May, 1884, the said H. S. Byam was lessee of the mining works of the corporation defendant, and at that date he commenced the construction of another brush dam, being about 300 feet below the other brush dam, which from said date to the present has been used, raised, and extended as required for restraining the tailings poured into said gulch until it has attained a height of about 10 feet, and has, at the present time, been extended over 600 feet in length, making a surface for the lodgment of debris over one-quarter of a mile in width, and the said dam may be raised, as emergencies require, to the height of 20 feet or more.

That these dams are self-supporting, and form complete obstacles to the passage of debris, and actually restrain, impound, and

103 permanently hold in place all the tailings from the said Hill-Top mins, and much of the debris poured into the water from other mines above the canal of said corporation defendant, and the said dams so formed are as indestructible as the hill from which the debris forming them are taken.

That there is no stream of living water running through said gulch.

That the whole supply of water used in mining by the said corporation comes from its ditch, and no water at any time flows along said gulch in sufficient quantities to disturb the earth, gravel, stones, sand, or other tailings, or to move them from their place of deposit.

That the said Hill Top mine is at its surface a moderately steep hill, and where the said tailings are deposited above said dams the ground is comparatively flat, as shown in the map hereto annexed, marked Exhibit "J," and the same are easily restrained in place without dams, and no floods can occur in said gulch which can sweep away such tailings when once deposited.

That the said Amador and Sacramento Canal Company has not, nor has its lessee, H. S. Byam, since the 30th day of November, 1882, mined at any other place than at said Hill Top mine.

104 That the water used in working said mine is derived from two sources:

1st. From the Cosumnes river, taken out about 12 miles east of the Hill Top mine.

2nd. From water passed to the canal of said corporation from the mills of the Plymouth Consolidated Gold Mining Company.

That the water so taken from the Cosumnes river is corrupted by mining above that point, and reaches the said mine charged with mining debris to a much greater extent than is the water when it flows past the dams of said corporation defendant.

That the water received into the ditch or canal of the corporation defendant from the said mills is highly charged with sand from rock crushed in said mills, and the canals and dams of the corporation defendant receive daily from the said mills about 200 tons of sand.

That by means of reservoirs and the dams of the corporation defendant the said water so received is rendered wholly harmless, and when it is again poured into the Cosumnes river it has been by the works of the said corporation defendant freed from debris, and the water which passes through the works of the corporation defendant is free from anything harmful to plaintiff, and nothing is held

105 in suspension in it except such fine particles as pass with the water below the farm of plaintiff. That herewith is presented to this court three bottles, marked Exhibits "E," "F," and "G," showing the usual condition of the water used by the corporation defendant and its lessees, which affiant caused to be taken out at different places to show the condition of the water used in mining at the Hill Top mine before and after it is used in said mine.

That the usual amount of water used by said Amador and Sacramento Canal Company and its lessees in their mining at said Hill Top is about 900 inches.

That the greatest pressure of water used in such mining is not more than 25 feet.

That the average pressure does not exceed 18 feet.

That the quantity of earth removed in such mining operations is so small that the whole is easily controlled by spreading it out above the dams and filtering the same through brush.

That the fall is so gradual that all the heavier debris stops above the dams, and the finer near and at the brush laid for that purpose at the top of the dams.

The process of mining called hydraulic, as used by said
106 corporation defendant, is more like sluicing than piping and has no more power in removing earth than sluicing.

That the description of the working of said dams as given by Judge McFarland in Exhibit C is correct and true as facts then existed, but since that date a new dam has been constructed and made more efficient than the first, and now, and at the date of the commencement of this suit, the water used by said corporation and its lessees is settled at our two dams, is spread out over a larger surface in two places, and is passed through two dams of dense brush so constructed as to detain all sand, gravel, stones, and other debris heavier than water.

The heavy matter to get into the river would have first to pass over a large surface, as shown in said map of said gulch, before it reached the tailings held back by said dams.

It would then have to be carried over the level surface of those tailings and through the dam, which is not likely to happen. It would then have to pass over a surface nearly level for about 1,800 feet, then through a pond of water 400 or 500 feet up, and over the flood of a lower dam.

Such an occurrence is scarcely possible, certainly not probable, in
such a degree that the strong arm of the chancellor should
107 be reached out to stay the legitimate business of said corporation defendant so conducted.

And referring to the plaintiff's said bill of complaint and to the allegation therein contained affiant, on her said oath, says:

That although the Cosumnes river is a living stream, with steep grade and at times a large quantity of water, it does not flow through Cook's gulch, and no part of the injury done to plaintiff, if any, was done by an act of the said corporation defendant or by H. S. Byam, its lessee.

That the dump of said Hill Top mine is not in the Cosumnes river. On the contrary thereof, the said dump is wholly confined to Cook's gulch and to the land of the said corporation defendant, and none of the tailings, debris, or other refuse matter set loose in operating the Hill Top mine (with the exception of some silt so fine as to be impalpable and so light as to flow onto the waters of the ocean) pass into the Cosumnes river.

That neither the said corporation defendant nor its lessee, H. S. Byam, in working said mine, or otherwise, deposited any tailing-, debris, or other matter in the said river since 30th November, 1882.

That the channel of the said Cosumnes river has not filled or its
depth lessened by any act of the said company defendant since
108 30th November, 1882, and if the channel has been filled since that time it has been by other persons.

That no deposit of tailings made by the corporation defendant or its lessees since Nov. 30th, 1882, changed or assisted in changing the waters of the Cosumnes river from clear, pure water into foul or impure, nor has it nor its lessees by any act charged or assisted in charging said water with earthy matter.

That since Nov. 30th, 1882, the said corporation defendant and

its lessees have not, nor has either of them, largely or at all contributed to the damage or injury complained of by plaintiff in his said bill of complaint, and they do not, nor does either of them, intend, commence, or continue to do any act mentioned in said complaint.

That neither the said corporation defendant, or H. S. Byam, its lessee, has been since Nov. 30th, 1882, a large or any contributor to the nuisance complained of by plaintiff, and no injunction is necessary to restrain any act of said corporation defendants or its lessee.

That the said corporation defendant and its lessee, H. S. Byam, have not, nor has either of them since Nov. 30th, 1882, done anything towards constituting a nuisance to plaintiff or to obstruct the free and comfortable use of said water by him, or to interfere
109 with or prevent him from enjoying and using his property, and neither of them has threatened his said property with destruction or injury.

That neither the said corporation defendant or its lessee, H. S. Byam, has refused to discontinue any act mentioned by plaintiff in his complaint. On the contrary thereof they have carried on the business of mining at said Hill Top mine since the 12th day of March, 1883, under, pursuant to, and strictly in accordance with the order of a court of equity having full power to restrain or prevent such acts and not otherwise.

That said case of Hobbs *vs.* The Amador and Sacramento Canal Company is still pending and has not been brought to final trial.

That the board of supervisors of the county of Sacramento commenced said action in the name of Hobbs.

That said board employed George Cadwalader to conduct said case with other to final determination for a fee of $12,000, paid and to be paid from the *the* treasury of said county.

That before the said Hobbs permitted the use of his name as plaintiff in said case the said board agreed to pay all costs in con-
110 ducting said suit from the treasury of said county, and the said board from such treasury has hitherto paid all the costs and attorneys' fees in said case.

That this case of Cashman *vs.* The Amador and Sacramento Canal Company *et al.* was also commenced by the said board of supervisors; that said board has agreed with said Cashman to pay all expenses of said last-mentioned suit, and said board did employ solicitors to bring this suit; and the said Cashman only allows his name to be used as such plaintiff to enable the said board of supervisors to maintain a second suit against said corporation defendant to harass, impoverish, and wholly ruin the corporation defendant.

That both of said suits are, so far as the Amador and Sacramento Canal Company and its lessees are concerned, practically and substantially for the same act prosecuted by the same board, and to and for the same end, using different names as parties plaintiff to give color to its acts of oppression.

And affiant submits that this court ought not, as a matter of discretion, stay the corporation defendant or its lessee from the prose-

cution of its lawful business conducted under the direction
111 and minute inspection of a court of equity in a case prosecuted practically by the same party who controls the prosecution of this case, paying its expenses and employing the attorneys conducting it.

That the agreement between the said board and the said Cashman by which the former agrees to pay the costs and expenses of this suit, and the latter agrees to prosecute said suit for the benefit of said Sacramento county, and not to compromise, dismiss, or settle the same without the consent of said board, is in writing, a copy of which is hereto annexed marked Exhibit "H."

And referring to the affidavit of J. C. Pearson, filed in this case, affiant says that the corporation defendant never sold water to one Alfred Aut Henley, and no such person within four years last past has mined in that vicinity; that one John P. Henley did mine in the vicinity of Cook's gulch, but since the spring of 1884 he has discontinued his operations, and no water is or has been used by him from said canal.

And referring to that part of the said affidavit of J. C. Pierson which alleges that the deposit of tailings in said gulch has had the effect to increase its grade, affiant says that the average grade has been neither increased or diminished by the deposit of tail-
112 ings, but above the dams the deposit of tailings diminishes the grade so that the slope is gradual and the finer tailings easily held and deposited without passing over or through the dams.

And referring to that part of the affidavit of said Pierson which describes the extent of the filling, affiant says that the material was mostly deposited in said river prior to 30th November, 1882, and none of it was since deposited by the corporation defendant or H. M. Byam, its lessee.

And referring to that part of said affidavit of said Pierson which sets out that the water was muddy above Cook's bar, but its muddy character was increased below Cook's bar, affiant refers to the specimens of water taken at different parts, and avers that, but for the acts of the said corporation in restraining the debris, the water of the Cosumnes would be more highly charged with debris than they are with the works of the defendants.

And referring to that part of said affidavit of said Pierson which refers to the sale of water by the corporation defendant, affiant says that it is not true that it sells water to any others above the Hill Top mine, and it is not true that the water in its ditch is or
113 has been in any manner polluted above the Hill Top mine after it enters said canal. The water in said canal is and has been polluted above the said canal by persons over whom the said company has no control, and no water is or has been sold by the corporation defendant since Nov. 30th, 1882, except to the defendant Martin Welch, and the water used in his mine is discharged into Cook's gulch below the Hill Top mine, and the tailings are all restrained and the water is not polluted thereby.

And referring to that part of said affidavit which alleges that the

damage done to the Cosumnes has been done by the deposit therein of the finer materials, affiant says that prior to November 30th, 1882, the damage done to the Cosumnes river was by the coarser materials; the finer, being largely mixed with vegetable mould, is carried outside the banks in high water, and does good rather than damage, but the materials which have passed the said dams since they were so constructed *is* so fine that *it* does not sink to and raise the bottom of said river, but passes with the water at all times below the land of plaintiff.

Affiant further says that the debris deposited in Cook's gulch is not so situated as to allow disintegration and deposit in the Co-
114 sumnes to any considerable extent; on the contrary, such boulders and stones are mainly covered with and embedded in earth, forming a bed, which does not wash away or cut out.

Affiant further says that hydraulic mining on the tributaries to the Cosumnes river or on said river did not commence until after 1862, and that prior to that time most of the damage done to the Cosumnes river had been accomplished.

That the hydraulic process as practised by the Amador and Sacramento Canal Company does not fill the river faster than if the mining was by means of sluices, and most — the filling of the bed of said river was by sluice and rocker mining.

And referring to the affidavit of R. W. Parker, and to that part thereof which alleges that the sand, earth, pebbles, and small stones from the mine of the corporation defendant forced their way into the Cosumnes river, affiant says the same is untrue; thall all the sand from the said mills is restrained, and all materials sufficiently solid and heavy to settle in still water are restrained by said dam, and no coarser sand, earth, pebbles, or small stones find their way into said river.

And referring to that part of said affidavit of said Parker which alleges that all the tailings, debris, and refuse matter set loose
115 in the operation of the Hill Top mine, except the heavier stones, pass into the Cosumnes river, affiant says the same is untrue.

Affiant also says the Amador and Sacramento Canal Company has not worked said Hill Top mine, or any mine, since the 1st day of February, 1884, and that said Byam is, and since that date has been, lessee of all the works owned by said corporation; that he, *doing* all that time, has worked the Hill Top mine and no other.

Affiant further says that the said Amador and Sacramento Canal Company has never furnished Gideon Dunn (this should be Devon), Geo. W. Phillips, Ira P. Lambing, Henry Lambing, Abner T. Hall, Joel C. Baughman, Aaron Ball, or Jeremiah Bliss any water for mining or other purposes, and it has no connection or relation with them or either of them.

And referring to that part of the said affidavit of said Parker which sets out that the Amador and Sacramento Canal Company claim an easement to flow and and deposit upon lands along said river their mining tailings or debris, affiant denies the same, and

avers that the said corporation, represented by affiant and H. S. Byam, claim no such right.

On the contrary thereof they are proceeding under a direct
116 order of court of competent jurisdiction restraining them from polluting the water of the Cosumnes, but allowing them to proceed with their mining under conditions prescribed by said superior court, which order of court has been fully complied with.

Affiant further says that all the water used by defendants at Irish hill is furnished by the Plymouth Consolidated Gold Mining Company and not by the Amador and Sacramento Canal Company.

JENNIE B. RITTER.

Subscribed and sworn to before me this 21st day of October, 1885.

[NOTARIAL SEAL.]

WILBUR F. GEORGE,
Notary Public, Sacramento Co., Cal.

117 *Aff'd'v't of H. S. Byam.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY, Defendants.

H. S. BYAM, being duly sworn, deposes and says: That he is a defendant in said suit.

That for more than four years last past he has been acquainted with the corporation defendant, and has been the lessee of its property since February 1st, 1884; that he is a practical miner, and understands the business carried on at the Hill Top mine and has a more thorough knowledge of the affairs of said corporation as carried on at its works than any other person.

That the canal of said corporation defendant and its mining operations since February 1st, 1884, has been conducted under
118 the personal control and direction of the affiant.

That affiant has heard read the affidavit of Jennie B. Ritter made in this case and annexed hereto, and knows the matters and things therein stated to be true.

That he has heard read the affidavit of J. C. Pearson, sworn to before Robert F. Devlin, a notary public, on the 5th day of September, 1885, and filed in this case September 10th, 1885.

That affiant was on the 7th and 8th days of January, 1883, manager of the said Hill Top mine; that the said Pearson, Bassett, and Alhardt at said date made an examination and survey of said Cook's gulch, including the Hill Top mine, under employment of the board of supervisors of said Sacramento county, and their evidence was used by the plaintiff in said case of Hobbs against the Amador and Sacramento Canal Company.

That affiant was also lessee and manager of said mine and canal when the same engineers made their survey in June, 1885, for the said board of supervisors.

That affiant was present when said engineers made both surveys and gave them such information as he possessed concerning the workings of said mine and ditch.

That affiant assisted said engineers in making said surveys
119 and after the last survey had been made by said engineers he received a letter from G. F. Allardt, one of said engineers, a copy of which is hereto attached, marked Exhibit "I."

That affiant, immediately after the receipt of said letter, did furnish said Allardt the dimensions of all the pits affiant knew of, mined after the 7th day of January, 1883 by him or by said corporation, which were not measured, and the capacity thereof estimated by said engineers.

That said engineers constructed a detailed map of Cook's gulch, including Hill Top mine, showing its exact status, according to their surveys, in January, 1883, and had from such survey, in 1883, the data for their survey in 1885, showing the changes both in excavations and fills.

Affiant has never seen the map constructed by said engineers showing their survey in 1885, but he is informed that such latter survey shows more mining debris added to the deposits above said dams than was washed out of the pits.

That the restraining dams referred to were constructed under the immediate supervision of W. S. Jennings, Jennie B. Ritter, and affiant, and are of a most substantial and complete character.
120 That the character and position of the said dams, with the slopes, and other matters connected, are shown on the map hereto annexed, marked Exhibit "J."

That under the direction of affiant three samples of the water have been taken at different times and at different places to indicate the condition of the water before it is used by affiant in said Hill Top mine and after it leaves there and passes through said dams.

That Exhibit "E" was taken from the Amador and Sacramento canal, about three miles above the Hill Top mine, about the middle of July, 1885, and truly represents the water running in the canal at that time; that the water in the canal was muddier than usual, consequent probably on the raising of a discharge-gate by the Plymouth Consolidated Gold Mining Company. This discharge-gate is used to empty a reservoir used in settling the water, and is opened about once a week.

That Exhibit "F" shows the ordinary flow of water to the Hill Top mine when the said gate has not been just opened, and is a fair specimen of the water and debris which for the last year has
121 passed into the Amador and Sacramento canal and used by affiant in working the Hill Top mine.

That Exhibit "G" is water taken from the Galogly flume about the latter part of July, 1885, after leaving the Hill Top mine and passing through said brush dams, and while affiant was running a full head of water through two nozzles, which passed about 80 inches

of water each under 25 feet pressure, with about 700 inches running over the bank, to assist in carrying away tailings.

That the Hill Top mine, as worked by affiant, only requires 900 inches to run it, and no more than that quantity has been used in working said mine since April, 1884.

That where sample "G" was taken it exhibited the usual and nominal condition of the water as it reaches the Cosumnes river after being used at the Hill Top mine.

That the Amador and Sacramento Canal Company has not, nor has affiant, as lessee, or otherwise, sold any water for mining purposes from said canal or otherwise to any person for use above said Hill Top mine at any time within four years last past, and has only sold water to one person for use anywhere, and that person is the defendant, Martin Welch, since May, 1884.

That the water flowing to the Amador and Sacramento
122 Canal *is* for a long time past has been corrupted—

1st. By the works of the Plymouth Consolidated Gold Mining Company, which has poured into the water flowing to said canal about 200 tons of sand of a dark grey color when wet, but white when dry.

2nd. By a large quantity of red earth taken from a place called Indian Diggings and passed through the mills of the said Plymouth Consolidated Gold Mining Company to the said canal.

3d. From other mining on the Cosumnes river and its tributaries, which affiant cannot now trace.

H. S. BYAM.

Subscribed and sworn to before me this 21st day of October, 1885.

[NOTARIAL SEAL.] WILBUR F. GEORGE,
Notary Public, Sacramento Co., Cal.

123 *Affid'v't of W. S. Jennings.*

STATE OF CALIFORNIA, }
County of Sacramento, } ss:

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM *et al.*, Defendants.

W. S. Jennings, being duly sworn, deposes and says: That he is, and for more than two years last past has been, an agent for Mrs. J. B. Ritter and engaged mainly in assisting her in the management of the business affairs of the Amador and Sacramento Canal Company.

That he has heard read the affidavit of Mrs. J. B. Ritter, herewith attached, and knows the contents thereof, and knows each of the facts stated by her in her said affidavit, and the same are true.

124 That under affiant's direction the drawing marked Exhibit —, with my initials W. S. J., was made from careful

measurements made on the ground by myself during the month of October, 1885, and said drawing is correct.

That the upper diagram on said drawing represents the upper portion of Cook's gulch and includes the banks of the Hill Top mine.

That the lower diagram on said drawing represents the lower portion of Cook's gulch.

That, as shown on said drawing, the distance from the Cosumnes river to the mouth of the lower flume (and known as the Gallogly flume) is 500 feet, and the length of this flume to dam number three is 1,165 ft., with an elevation at base of said dam above the said river of 13.99 feet.

That the hight of said dam is 7.57 feet, the width 350 feet, and for the 300 feet next above said dam the raise in elevation is $\frac{96}{100}$ feet.

That the top of said dam number three is 1.09 feet above the tailings now deposited there.

That said dam number three is constructed of pilings driven firmly into the ground and faced, both front and back, with lumber, and filled and firmly packed with earth and gravel.

125 This distance from dam No. 3 to dam No. 2 is 1,223 feet. The elevation of the base of this dam above the river is 28.63 feet. Said dam is 11.03 feet in height and 7.56 feet in width, and contains about 34,452 sq. yds., surface measurement, and for the distance of 300 feet above the dam. The raise in elevation is 1.12 feet. This dam consists of brush, and does firmly and securely restrain all debris.

The distance from dam No. 2 to dam No. 1 is 1,188 feet. The elevation of the base of this dam is 55.05 feet, and the height is 16.61 feet. The length is 620 feet, and contains about 22,950 sq. yds., in surface measurement, and for the distance of 200 feet above the said dam the raise in elevation is 4.06 feet. This dam is also constructed of brush, and effectually restrains the debris from said Hill Top mines.

The distance from dam No. 1 to the mouth of the flume or dump is 702 feet, and the length of flume to ground sluice or cuts in the mine is 2,244 feet, and it is 308 feet from head of flume to banks, which average 19 feet in height.

That said dams not only restrain the boulders, gravel, coarse sand, and other coarser matter, but also the finer material, such as is shown in bottle marked Exhibit "K," which was by affiant taken at

126 random immediately above dam marked No. 2 on drawing on the 28th day of October, 1885.

W. S. JENNINGS.

Subscribed and sworn to before me this 30th day of October, 1885.

[NOTARIAL SEAL.] WILBUR F. GEORGE,
Notary Public, Sacramento Co., Cal.

127 *Aff'd'v't of O Plummer.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California,

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants.

Oliver Plummer, being duly sworn, deposes and says:

That he is, and for the last 20 years has been, a farmer residing and farming on and near the Cosumnes river, about — miles above the farm of George Cashman.

That he is acquainted with the Hill Top mine and the canal of the corporation defendant.

That the main damage done to the Cosumnes river by filling it with cobble-stones, gravel, sand, and other debris was caused by a very heavy flood which occurred in the winter of 1861–2, which brought from the tributaries to said river and from the bars a
128 large amount of debris, filling up the channel and covering the farms along its banks with a coarse sand but little mixed with vegetable mold.

That since 1861 the debris sent down the said river at its flood is of a less damaging character, and when carried over the banks at high water form valuable soil.

That from this soil generally grows willows, and when they are removed the land is highly productive.

That he has examined the water used at the Hill Top mine both before it is used through the monitors and after it leaves the restraining dams, and affiant is of opinion that the said restraining dams actually detain and impound all the harmful matter set loose by mining at the Hill Top mine.

That the water as it leaves said restraining dams after its use in said mining is wholly harmless and cannot to any perceptible extent raise or assist the raising of the bed of the Cosumnes river at the farm of the plaintiff, Cashman.

OLIVER PLUMMER.

Subscribed and sworn to before me this 21st day of October, 1885.
[NOTARIAL SEAL.] WILBUR F. GEORGE,
Notary Public, Sacramento Co., Cal.

129 *Aff'd'v't of J. C. Sherwood.*

In the Circuit Court of the United States for the 9th Circuit, District of California.

GEORGE CASHMAN
vs.
AMADOR & SACRAMENTO CANAL COMPANY & OTHERS.

J. C. Sherwood, being duly sworn, deposes and says: He resided

on the Cosumnes river, a short distance below Cook's gulch, for more than 20 years, ending about the last of 1884.

That he is well acquainted with Cook's gulch, the Hill Top mine, and the defendant Byam and the Amador and Sacramento Canal Company.

That he owned a large farm for more than 20 years on said river, just below the Cook's gulch, and carefully observed the rise of the bed of said river as it filled up.

That the Cosumnes river was mostly filled up in the great flood of 1861–'2 and before hydraulic mining was resorted to at the Hill Top mine.

That he has since early in 1884 observed the working of the said mine, and of the restraining dams in Cook's gulch and the
130 water flowing to and from said mine and dams, and he knows that the said dams during that time have actually restrained all the tailings flowing from said mine during that time, except some fine impalpable material held in suspension in the water wholly harmless to plaintiff.

J. C. SHERWOOD.

Subscribed and sworn to before me this 23rd day of October, 1885.

[NOTARIAL SEAL.] WILBUR F. GEORGE,
Notary Public, Sacramento Co., Cal.

131 *Aff'd'v't of S. H. Hawkins.*

STATE OF CALIFORNIA, *County of Sacramento,* } ss:

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL CO., H. S. BYAM, *et al.*, Defendants.

S. H. Hawkins, being duly sworn, deposes and says: That he is a blacksmith and teamster, and has been for the last 10 months in the employ of H. S. Byam, and during that time has had charge of the repairing and raising of the restraining dams placed by the Amador and Sacramento Canal Company in Cook's gulch for the purpose of restraining, impounding, and holding back the debris, boulders, sand, and slickens from the Hill Top mines from passing into the Co-
sumnes river; and says he has taken constant notice of said
132 drams, and that the said dams do restrain, impound, and hold back all debris, boulders, sand, and slickens from passing into said river; and that the water used by the Hill Top mines, after passing through the said dams, does not contain anything which would tend to fill up, raise, or injure the bed of said river or contribute in any way to the injury of plaintiff's land; and that the water after passing said dams does not contain as much sand and slickens and is purer and better fitted for family and domestic pur-

poses than when received by the Hill Top mines and before being used by said mines.

SAM. H. HAWKINS.

Subscribed and sworn to before me this Oct. 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

133 *Aff'd'v't of H. W. Plummer.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

H. W. Plummer, being duly sworn, on his oath deposes and says: That he is a farmer; that his ranch is situated on the Cosumnes river about four miles west from the "Hill Top mines."

I have frequently had occasion to examine the water as it passes my ranch and it is not charged with debris in the manner it was prior to the placing of the restraining dams in Cook's gulch by the Sacramento and Amador Canal Company—no sand, gravel, or boulders in the water as it passes my place in the Cosumnes
134 river, except fine impalpable matter.

My place is situate on the Cosumnes river, between the farm of George Cashman and the restraining dams in Cook's gulch. I have also examined the water before it enters the ditch of the Amador and Sacramento Canal Company, and it is charged with debris, which is restrained before it leaves the lower dam in Cook's gulch. The water is also clearer when it leaves the dams than it is when it passes into the ditch.

H. W. PLUMMER.

Subscribed and sworn to before me October 27th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

135 *Aff'd'v't of G. W. Heath.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

G. W. Heath, being duly sworn, deposes and says that he is a

farmer by occupation; that he has resided on the line of the Amador and Sacramento Canal Company 24 years; that he is well acquainted with the location of defendants' restraining dams in Cook's gulch.

That said dams were built by defendants in good faith to restrain and impound the debris from the Hill Top mines; that it is his opinion that said dams do effectively impound and restrain said debris from flowing into the Cosumnes river.

136 That he is one of the parties who was with H. S. Byam when he took the sample of water marked Exhibit "G" from below restraining dams in Cook's gulch.

Affiant further says that he has used water from the Amador and Sacramento Canal Company, for irrigating and stock purposes, above the Hill Top mines of the defendants for many years; that he knows, of his own personal knowledge, that the water in said canal is more fully charged at many times with deleterious matter, such as sand, than when taken up below the dams of defendants.

G. W. HEATH.

Subscribed and sworn to before me Oct. 27, 1885.

[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

137 *Aff'd'v't of E. B. Heath.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

Edwin B. Heath, being duly sworn, on his oath deposes and says: That he is a miner and common laborer by occupation, a native of the county of Sacramento, State of California, and of lawful age; that he has resided in Hill Top mining district all his life; that he is well acquainted with defendants and their property, and that he is familiar with the location of defendants' dams built in Cook's gulch.

That defendants' dams are three (3) in number, and deponent further says that he has performed labor on each and every
138 one of said dams in Cook's gulch; that he knows said dams are built in a strong and durable manner; that he knows of his own observation that said dams are built for the purposes of restraining and impounding the rocks, sand, and debris from the Hill Top mines, and preventing any debris from flowing into the Cosumnes river, and said dams are effective. Deponent further says: That he has inspected said dams many times, and that the dams of

the defendants known as the middle and lower dams are built and maintained in such a condition of effectiveness that none of the debris from defendants' mines is allowed to pass over or around said dams. But said dams are built and maintained above the water level, thereby causing back or dead water (commonly known) and affording a system of filteration. Deponent further says that he was with H. S. Byam when he took up samples of water from below the dams, as shown by Exhibit "G," and that he truly believes that the water in Amador and Sacramento canal contains more de-terious matter before it falls into the mines than when it passes into the river below defendants' dams.

ED. B. HEATH.

Subscribed and sworn to before me October 26th, 1885.

[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

139 *Aff'd'v't of A. O. Dugan.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States, in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

A. O. Dugan, being duly sworn, deposes and says: That he is a hotel-keeper by occupation; that he has for the last year observed the water used, and passed said Hill-Top mines, below the restraining dams placed in Cook's gulch, and he is satisfied that no gravel at all passes said dams, and they restrain, hold back, and impound nearly all the material which comes from said mines which could or would be washed into and fill or raise the bed of the Cosumnes river, and what debris from said mines does pass such dam is of fine
140 material and too light to settle in running water which must pass beyond the land of plaintiff.

A. O. DUGAN.

Subscribed and sworn to before me this October 2th, 1885.

[NOTARIAL SEAL.]

W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

141 *Aff'd'v't of H. Bright.*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

H. Bright, being duly sworn, deposes and says: That he is a

farmer by occupation and lives about 3 miles south of the *the* village of Michigan Bar; that he is well acquainted with Cook's gulch, the Amador and Sacramento Canal Company's mines and canals, and knows that the restraining dams placed in Cook's gulch for the purpose of restraining, impounding, and holding back the debris from said mines do, in fact, and actually restrain, impound, and hold back from the Cosumnes river all debris, boulders, sand and slickens, and other foreign matter coming from said Hill Top mines, and that the water, after passing through said
142 dams, is equally pure and more fitted for family and domestic use after having passed through said dams than before being used by the Hill Top mines, said water being loaded and fouled by quartz sand from the Plymouth quartz mines and slickens and sand from other mines above defendants' canal, and that the said Amador and Sacramento Canal Company or the Hill Top mines do not in any way contribute to the filling or raising of the bed of the Cosumnes river, and do not all contribute to the injuring of plaintiff's land.

HENRY BRIGHT.

Subscribed and sworn to before me Oct. 26th, 1885.

[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

143 *Aff'd'v't of A. F. Raymond.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPHNY, H. S. BYAM, *et al.*, Defendants.

A. F. Raymond, being duly sworn, deposes and says: That he is, and for the year last past has been, part owner of a farm consisting of 1,320 acres, situated on the Cosumnes river, about 3 miles west of Hill Top mines, and known as the Sherwood and Hamilton ranches.

That he has during the last year observed the water used, and passed said Hill Top mines, below the restraining dams placed in Cook's gulch, and he is satisfied that no gravel at all passes said dams, and they restrain, hold back, and impound nearly all
144 the material which comes from said mines which could or would be washed into and fill or raise the bed of the Cosumnes river, and what debris from said mines does pass said dams is of fine material and too light to settle in running water which must pass beyond the land of plaintiff.

A. F. RAYMOND.

Subscribed and sworn to before me this 26th day of October, A. D. 1885.

[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

145 *Aff'd'v't of A. J. Kellogg.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

A. J. Kellogg, being duly sworn, deposes and says: That during the month of August, 1885, he was employed by H. S. Byam as agent at the reservoir of the Amador and Sacramento Canal Company, and, under instructions from H. S. Byam, he, on the 10th day of August, 1885, took from the running water in the canal, ¼ mile above the reservoir and about 3 miles above the Hill Top mines, the bottle of water marked Exhibit "E."

his
A. J. x KELLOGG.
mark.

Witness his mark:
W. S. JENNINGS.

146 Subscribed and sworn to before me Oct. 27th, 1885.

[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

147 *Aff'd'v't of B. F. Perry.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM *et al.*

B. F. Perry, being duly sworn, on his oath deposes and says: That he is a citizen of lawful age and competent to be a witness herein; that he is engaged as one of the stage drivers on the line of stages that carry the U. S. mail from the city of Sacramento, State of California, and the town of Michigan Bar, Sacramento county, State of California; that said stages, two being on the line, pass the dams of the Amador and Sacramento Canal Company placed in Cook's gulch for the pupose of restraining the boulders, gravel, and

coarse sand from the "Hill Top mines;" that upon examinations made by affiant and from his daily observation he says that the dams have restrained all the boulders, gravel, and coarse
148 sand, and allowing nothing whatever to pass through the dams except fine impalpable matter, which floats in the water and is too fine to be observable, said matter being that which discolors the water and gives the water the deep red color it has from leaving the dams.

Affiant further says that the water, where it enters the ditch above the "Hill Top mines," is charged with debris and is of a deeper red color, and that defendants Amador and Sacramento Canal Company's dams do effectually restain all the debris from said mines, except as hereinbefore stated.

B. F. PERRY.

Subscribed and sworn to before me Oct. 27, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

149 *Aff'd'v't of G. G. Gilbert.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, Defendants.

George G. Gilbert, being duly sworn, deposes and says: That he is a stock raiser by occupation, and that at such times as the Cosumnes river is in flood that the amount of debris carried by a given point below the mouth of Big Cañon, in Amador Co., Cal., about nine (9) miles above the "Hill Top mines," will in 36 hours far exceed, in my belief, the amount of earth that the Amador and Sacramento Canal Company could move with all the facilities in as many months.

GEORGE G. GILBERT.

Subscribed and sworn to before me this Oct. 26, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

150 *Aff'd'v't of R. W. Ketchum.*

STATE OF CALIFORNIA, } ss:
County of Amador, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

Richard W. Ketchum, being duly sworn, deposes and says: That he is of lawful age, 59 years, a resident of Amador county, California, and that his occupation is that of a miller.

I am well acquainted and familiar with the restraining dams in Cook's gulch, Sacramento county, California, and used for the purposes of restraining and impounding all debris, sand, boulders, and slickens from passing into the Cosumnes river from the mines of the Amador and Sacramento Canal Company, at Hill Top, in Sacramento county, California, and know that they do restrain,
151 impound, and hold back all debris, sand, boulders, and slickens and all material which tends to fill up the bed of the Cosumnes river.

And deponent further saith that he is well acquainted with the water used by the Amador and Sacramento Canal Company in their mining operations, and says it contains more slickens, sand, and debris before being used by the said company than it does after being used, when it has passed through their said dams. And deponent further saith that the mining operations of the said Amador and Sacramento Canal Company have not within the last two years contributed to the filling in or raising of the bed of the said Cosumnes river.

RICHARD W. KETCHUM.

Subscribed and sworn to before me this 24th day of October, 1885.
[NOTARIAL SEAL.] WM. J. McGEE,
Notary Public, Amador County, Cal.

152 *Aff'd'v't of H. M. Ward.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

H. M. Ward, being duly sworn, deposes and says: That he is a farmer by occupation; that he is acquainted with Cook's gulch, Hill

Top mines, and the Amador and Sacramento canal, and has from time to time during the 6 months last past observed the condition of the water both in the ditch above said mine and below the dams in said gulch for the purpose of restraining and impounding the tailings from said mines, and that the water below said dams and where it flows into the Cosumnes river has during that time
153 been clear and less charged with mining debris than was the water above said mine.

H. M. WARD.

Subscribed and sworn to before me this October 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

154 *Aff'd'v'ts of Prothero et als.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

Fernando Prothero, Francis Michel, William Brieding, F. W. Schmitt, J. P. Harley, James Carter, Alonzo Neal, M. Fochrenbacher, Charles Bennett, Ed. Neal, Park Brown, N. Brown, W. S. Wilber, & John Hitton, being duly sworn, each for himself deposes and says: That he is acquainted with Cook's gulch, the Hill Top mines, and the Amador and Sacramento canal, and has from time to time during the 2 years last past observed the condition of the dams
155 in Cook's gulch used by the Amador and Sacramento Canal Company to restrain, impound, and hold back the debris, boulders, sand, and slickens from passing into the Cosumnes river from said mines, and he says that said dams do restrain, impound, and hold back all bebris, boulders, sand, and slickens, and that no material does pass these dams into the Cosumnes river from the Hill Top mines to the injury of said river, or do said mines contribute in any way to the raising or filling of the bed of said Cosumnes river.

Ferdando Prothero, farmer.
William Brieding, farmer.
J. P. Hurley, carpenter.
Alonzo Neal, sheep shearer.
Charles Bennett, sheep raiser.
Park Brown, saloon keeper.
W. S. Wilber, farmer.
Francis Michel, farmer.
F. Wm. Schmitt, farmer.
his
James x Carter.
mark

Witness: W. S. Jennings.

Subscribed and sworn to before me this Oct. 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, California.

Maer Fössormborssner, stock raiser.
Ed. Neal, sheep shearer.
156 N. Brown, farmer.

Subscribed and sworn to before me this Oct. 27th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

his
John x Hilton, stock raiser.
mark

Witness his mark: W. S. Jennings.

Subscribed and sworn to before me this October 28th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

157 *Aff'd'v't of Crawford et al.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants.

H. M. Crawford, Joseph H. White, James J. Gaffney, Jos. Barry, J. T. Hurley, Emmett Brieding, John Swett, A. J. Kellogg, John Lott, A. Slitz, Severin Hamlin, Wm. Barber, Albert Barber, Ambler Barber, Reuben Ball, L. Bothun, Chas. Wieland, Joseph Barney, Elj S. Taylor, Thomas P. Olive, W. A. Ford, Thomas Finn, Hans Ronna, Fred Brum, Patrick Flynn, John Gaffney, N. Tusch, James Jordan, James Nightingale, J. Bliss, G. C. Ferguson, John Conlin, Henry Thompson, George G. Gilbert, Wm. Kugan, George Anderson, John W. Heath, Chas. A. Ruman, J. H. Lowry, John H. Gaff-
158 ney, Ignatius Guiros, Ed. Dunn, Robert Allen, Loyal C. Moore, Frank McCulloch, Fred Winzel, C. H. Hilton, D. F. Gray, J. J. Doty, Bernhard Fischer, Peter Dickinson, Thomas J. Hilton, Charles A. Cramer, Severn M. Prothero, J. T. White, James W. Heath, A. H. White, John Long, David Devore, Gideon Devore, George Keith, W. A. Brown, G. Clemons, J. W. Cushman, Benj. Perkey, Thomas W. Carbine, Moses Patterson, being each duly sworn, for himself deposes and says:

That he is acquainted with Cook's gulch, the Hill Top mine, and the Amador and Sacramento canal, and has from time to time during the two years last past observed the condition of the water both

in the ditch above above said mine and below the dams placed in said gulch for the purpose of restraining and impounding the tailings from said mine, and that the water below said dams, and where it flows into the Cosumnes river, has during that time been clearer and less charged with mining debris than was the water above said mine.

H. M. Crawford, carpenter.
Joshua Heath, white, miner.
James J. Gaffney, farmer.
James Barry, miner.
J. T. Hurley, miner.
Emmett Breeding, farmer.
John Sweet, potter.
his
159 A. J. x Kellogg, miner.
mark
Witness: W. S. Jennings.
John Lott, miner and farmer.
A. Slitz, miner and farmer.
Simeon Hamlin, farmer.
his
William x Barber, farmer.
mark
his
Albert x Barber, "
mark
Witness: W. S. Jennings.
Ambler Barber, farmer.
Reuben Ball.
Louis Bothun.
Charles Weiland.
Joseph Barney.
Eli S. Taylor, farmer.
Thos. P. Olive, saloon-keeper.
W. A. Ford, miner.
Thomas Finn, farmer.
Hans Ronna, saloon-keeper.
his
Fred. x Brown, farmer.
mark
Witness: W. S. Jennings.
Patrick Flynn, miner.
John Gaffney, farmer.
A. Tusch, farmer.
James Jordan, miller.
James Nightingale, stock raiser.
J. Bliss, stock ra-sor and miner.
G. C. Ferguson, stock ra-sor & rancher.
John Comlin.
his
Henry x Thompson, sheep herder.
mark
Witness his mark:

W. A. Gett, Jr.

160 George G. Gilbert, farmer and stock raiser.
William Keegan.
George Anderson, farmer.
John W. Heath, merchant.
Charles A. Ruman, stock raiser.
O. H. Lowry, carpenter.
John H. Gaffney, farmer.
Ygnacio Guiros, butcher.
Edward Dunn, farmer.
Robert Allen, farmer.
Loyal C. Moore, store business.
Frank McCulloh, farmer.
Fred. Wenzel, blacksmith.
C. H. Hilton, farmer.
D. F. Gray, farmer.
J. J. Doty, farmer.
Richard Fischer, farmer.
Peter Dickinson, farmer.
Thomas J. Hillton, farmer.
Charles A. Cramer, farmer.
Simeon M. Prothero, farmer.
I. T. White, farmer.
James W. Heath, farmer.
A. H. White, laborer.

Subscribed and sworn to before me this October 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

161 John Long, farmer.
David Devore, farmer.
Gideon Devore, farmer.
George Kreth, farmer.
W. A. Brown, blacksmith.
G. Clemons, farmer.
J. W. Cushman, stage driver.
Benj. his x mark. Perkey, stock raiser.

Witness his mark:
W. S. Jennings, blacksmith,
Thomas W. Carbine.
Moses Patterson, clerk.

Subscribed and sworn to before me this Oct. 27th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

162 EXHIBIT "A."

In the Superior Court of the County of Sacramento and State of California.

DIGGORY HOBBS, Plaintiff,

vs.

AMADOR AND SACRAMENTO CANAL COMPANY, Defendants.

The above-named plaintiff complains against the above-named defendant, and for cause of complaint shows unto the honorable court as follows, to wit:

I.

That the plaintiff is a farmer by occupation and a resident of San Joaquin township, Sacramento county, and there for more
163 than twenty years immediately last past he has resided upon, owned, possessed, improved, and largely cultivated a tract of land of about eight hundred acres, known by the name of "Hobbs' Ranch," and which is composed of these two certain parts of the Mexican Rancho Omochumnes, patented by the United States on or about the 1st day of July, 1870, and which said portions of said grant are described as follows, viz: The upper or easterly half of lot number one, of Daylor's lower tract of said rancho as the same is designated upon a map made by one John G. Cleal, and which is now on file in the office of the recorder of Sacramento county. Also lot number fourteen as laid down and described on the map aforesaid, and being one of the Sheldon divisions of said rancho; that said described parcels of land are coterminous and are bounded on the south by the Cosumnes river, on the west by the Vermilya ranch, on the north by the lands of John Shaw and Thomas McLaughlin, the said last line coinciding with the north line of the Omochumnes grant and the county road —, and on the east by the Treganza ranch. All of said lines, save that on the river, are marked by fences, and of said parcels of land the plaintiff for more
164 than twenty years immediately last past has been, and is now, in the actual and adverse possession thereof, owning and claiming to own the same as against the whole world.

That upon said lands the plaintiff has from time to time affixed lasting and valuable improvements, which cost him over $20,000, and which are now worth $5,000; that the said tract of land is composed substantially of equal parts of bottom and upland, and is situate upon the north bank of the Cosumnes river, on which it fronts for over one mile.

That four hundred acres of plaintiff's said tract of land were rich and highly productive alluvial lands capable of producing corn, wheat, and all the valuable agricultural staples of the State, and but from the damage already done to it by hydraulic-mining debris and the further damage apprehended from the same cause, as hereinafter described, *and* would be worth $150 per acre.

That the remainder of plaintiff's tract of land is productive upland, producing wheat and barley, and its general elevation is not

more than from fifteen to thirty feet higher than plaintiff's bottom land aforesaid.

II.

That the defendant the Amador and Sacramento Canal
165 Company is a corporation organized under the laws of the State for the purpose of constructing ditches and carrying water in the same to mines and disposing of the same and mining therewith; that said defendant has acquired the possession of and claims to own a large tract of mineral ground at a place called "Hill Top," in Sacramento county, and which is situated a short distance south of that place, in said county, known by the name of Cook's bar, and which said mine and mining ground is also situated adjoining to and embraces a gulch or ravine known by the name of Cook's gulch, about three-quarters of a mile long, and which empties into the said Cosumnes river at said Cook's bar; that the said mining ground of the said defendant is about 175 feet above the level of the said Cosumnes river, and consists of red earth, gravel, sand, and cobble-stones, readily disintegrated by water and powder; that the said defendant has conducted to said mining ground (which has acquired the name of "Hill Top mine") from the headquarters of the Cosumnes river, by means of ditches, flumes, and pipes, a supply of water exceeding 1,000 inches by miners' measurement, and has fully equipped its said mine with iron pipes, giants, reservoirs, flumes, tail-races, and other appliances usually found in first-
166 class hydraulic mines; that the dump of said mine is in the Cosumnes river, and part of the equipment of said mine consists in a flume or tail-race laid in the lower part of Cook's gulch, and through which all the tailings, debris, and refuse matter set loose in course of the operation of said mine (with the exception of the heavier stones) passes into the Cosumnes river; that said defendant has, for the last twelve or fourteen years, been operating said Hill Top mine, and in working the same has deposited in the Cosumnes river, through Cook's gulch aforesaid, over ten millions of cubic yards of tailings, consisting of sand, fine gravel, and slickens (the great bulk therein being sand), in addition to quite a large quantity of similar mining debris, deposited in the bed of said river through other gulches and ravines, and notably through one lower down on said river, called Arkansas gulch.

III.

That the Cosumnes river is a large, living stream which rises high in the summit of the Sierra Nevada mountains, and on a steep grade (exceeding twenty feet to the mile), and through deep defiles and rocky cañons, pursues a general westerly course until it reaches Cook's bar aforesaid, where it enters the Sacramento valley
167 and crosses it on a grade suddenly reduced to three feet, and which gradually decreases to six inches per mile, and empties into the Mokelumne river, at a place called Mokelumne City, about twenty miles from said Cook's bar.

That said river is subject to sudden rises and freshets during the

rainy season of each year, and in the spring of the year and during the melting of the snow on the mountains it remains high.

That until the regimen of said river was effected by the deposits of mining debris in it from the said "Hill Top mine," the said river, in crossing the Sacramento valley, ran in a well-defined channel, between bank- sufficiently high to protect the bottom lands of its margins from overflow, and the waters thereof were clear in the summer and sufficiently pure at all seasons of the year for household, stock, and farm uses, and for the purpose of irrigation.

IV.

That during the present year the said defendant The Amador and Sacramento Canal Company, and the defendant H. S Byam, and the defendant John Haggerty and his copartner (whose name is unknown, and who is sued herein under the name of
168 John Doe, and whose name, when known, plaintiff prays leave to insert herein), under their firm of John Haggerty & Co., and the defendant John D. Hurley and the defendant —— Mackey (whose christian name is unknown, but, when discovered, plaintiff prays for leave to insert herein), have been engaged with the water supply aforesaid in working by the hydraulic process the said "Hill Top mines," and in depositing the tailings or debris therefrom into the said Cook's gulch aforesaid, and running the same through it *en masse* (except the heavier stones contained in it), and through the tail flumes laid as aforesaid in its lower end and into the Cosumnes river at the dump aforesaid; that said deposits have been made daily and continuously by said defendants, and vary in quantity from one thousand to eighteen hundred cubic yards per diem of solid material, which consists principally of sand mixed with a small quantity of clay and some gravel.

That said "Hill Top mine" is of several hundred acres in extent and of great depth, and contains material enough to last for the next ten or twelve years at the rate at which it has heretofore been washed and mined out as aforesaid by defendants.

169 That at the close of each summer season the reservoirs, ditches, and lateral canals used in operating the said Hill Top mine become partially filled with earthy matter and contain several thousand cubic yards thereof, and before further use have to be cleaned out, and the practice of the parties defendants using and operating the said mine is, and has been, by means of heads of water to wash and clear said material out of said reservoir and ditches into and down through said Cook's gulch and into the Cosumnes river, at the dump aforesaid, and down said river, to the great damage of the plaintiff and his lands aforesaid.

That the defendants intend to wash said refuse matter which has accumulated as aforesaid into said river at said point, and have declared their intention to, and really intend to, continue mining said Hill Top mine in the manner and at the rate aforesaid, and through Cook's gulch as aforesaid, and into the Cosumnes river at the place aforesaid, and will do so, unless enjoined and restrained by the injunction of this honorable court.

That the tailings or mining debris discharged into the Cosumnes river from the said Hill Top mine have been washed and
170 removed by the waters of said stream and that used in the operation of said mine down the same and lodged and deposited in the bed and on the bottom lands of said river throughout its whole length, and therewith the bed of said river has been filled up from depths varying from ten to thirty feet, and the plaintiff's bottom lands, as well as all the other bottom lands on said river, have been overflowed and injured to a much greater extent than at any time before the commencement of such mining by defendants or either of them; that the rate of filling in the sand channel of the Cosumnes river below the said dump of the Hill Top mine and down to and for some distance below plaintiff's lands aforesaid has increased most rapidly in the last four years, and is still increasing rapidly each year, and will continue to increase until defendants' said mining operations be stopped.

That a large number of acres of plaintiff's said bottom lands in the last three years have been covered with sand from said Hill Top mine to their great and irreparable injury, and said deposits on plaintiff's lands each year are increasing in depth and extent;
171 that immediately following said deposits there comes, in aggravation of the evil and as an inseparable part of it, a dense growth of willows, and so it is that over 150 acres of plaintiff's bottom land aforesaid, where three years ago he raised a large and profitable crop of corn, is now covered by a deposit of sand varying in depth from six inches to over three feet, and on which there is already a thicket of dense and worthless willows.

That plaintiff has constructed a line of levee over a mile in length along the entire river boundary of his land, and yet has not been able to protect all his bottom land aforesaid from being flooded by the debris from the aforesaid "Hill Top mine;" that in many places above plaintiff's premises the channel of said river from the mining debris has become chocked and filled, which has caused the choked and debris-ladened water of said river at its high stages to leave its old channels and to seek new ones, and finally to rush like a torrent over plaintiff's land, and to tear it up in places and make great furrows and gullies in it, and in other places, where its current was checked or deadened, to leave deposits of sand, destroying such crops as happened to be in the way, and doing great and
172 irreparable injury to said land.

That in addition to this damage the chocking of and filling in the channel of said river as aforesaid from the mining debris aforesaid has damaged such of plaintiff's bottom lands as could be tilled by postponing unduly the plowing and seeding thereof at the customary part of the year; that in the comparatively dry year the water from said river remained on all of plaintiff's land, suitable for cultivation, and situate within a half of a mile of the river, until the 20th of June.

That the deposits of the mining debris aforesaid in the said river bed and upon plaintiff's land has already taken away more than

one-half of its value, and all of it from the same cause is threatened with destruction.

That were it not for the mining debris aforesaid continuously deposited in said river from the said "Hill Top mine" the waters of the said river from Cook's bar down to and past plaintiff's lands aforesaid would be reasonaly clear and thoroughly adapted to household, farm, and animal uses; but so it is that the water of said river,
173 about eight years ago, commenced getting foul from the presence of said mining debris, and each year since has been gradually growing worse until now it is utterly unfit for any useful purposes whatever. And plaintiff further avers that if defendants be suffered to continue their mining operations as aforesaid, and to deposit the tailings from the said river as aforesaid in the bed of said river, the channel thereof abreast of and above plaintiff's premises will become more and more filled until it is entirely obliterated and the waters of said river charged with said hydraulic-mining slimes, sands, and debris having no channel to flow in will run at random over and will cover all of plaintiff's lands with said destructive material, to their great and irreparable injury. And plaintiff further avers that the acts of the defendants in using the bed of the Cosumnes river as a place for the deposit and wastage of the tailings or debris from the said Hill Top mine constitute a nuisance to the plaintiff and his property aforesaid, and is an obstruction to the free use by plaintiff of his said lands and improvements, and interferes with and prevents plaintiff from using and enjoying his said property, and threatens it with destruction. And the plaintiff further avers that if the defendants be permitted to use the bed of
174 the Cosumnes river aforesaid as a place for the deposit of the tailings from the mine aforesaid it will cause all plaintiff's lands to be overflowed with sand and sediment, and to become worthless and unfit for cultivation or habitation.

V.

Plaintiff further avers that the power of the water of the Cosumnes river to scour out and carry off the tailings or debris deposited in the bed and channel of said river as aforesaid is proportioned to the depth and purity of the water flowing between its banks; the greater the depth of the water so flowing and the greater its purity the greater is its force and power to carry off said deposits; that said force and power decrease in proportion to the diminution of the depth of the water so flowing in said river bed or channel, and to the extent that said water is surcharged with earthy matter; and plaintiff avers that if the defendants stop mining at the "Hill Top mine" aforesaid, and do not resume the same, that the waters of the Cosumnes river will at —— commence to scour out and carry off the debris heretofore deposited therein as aforesaid, and will within a few years restore said river to its former and original condition.

Plaintiff further alleges that the unlawful acts of defendants above
175 complained of constitutes a nuisance of a continuously recurring nature, produced and continued by the repeated wrongful acts of defendants, and not subject to abatement, and that

the only or appropriate or adequate remedy is by the injunction of a court of equity.

VI.

Wherefore the plaintiff prays that during the pendency of this action the defendants and all and each of their officers, superintendents, agents, and employés may be enjoined and restrained from discharging or dumping into Cook's gulch or into the Cosumnes river, or into any of its tributaries, any mining tailings or mining debris or any gravel, sand, clay, debris, or refuse matter from the said Hill Top mine or any other, or from the said ditches, reservoirs, or canals of the defendants, and also from causing or suffering to flow into said Cook's gulch or into said river or any of its tributaries any mining tailings or debris, or any sand, clay, or refuse matter, and also from suffering others to use said water supply of the Amador and Sacramento Canal Company for the purpose of washing into said Cook's gulch or into said river the material composing any other mine or mining ground, and that upon the final hearing of this action the said defendants may be so, as aforesaid, enjoined and restrained perpetually, and that plaintiff recover his costs herein.

176 GEORGE CADWALADER,
Attorney for Plaintiff.

Duly verified.

Filed September 12th, 1882.

THOMAS H. BERKEY, *Clerk*,
By CHARLES M. COGLAN, *Deputy*.

EXHIBIT B.

(Title of court and cause.)

The people of the State of California to the above-named defendants send Greeting:

In the above-entitled cause a judge of the above-entitled court, having made an order that a temporary writ of injunction should issue herein enjoining and restraining the defendants in said cause from certain acts in the order set forth, we, therefore, in consideration thereof, and in obedience to said order, command you, the said defendants, and each of your officers, superintendents, agents, and employés, until the further order of this court, to desist and refrain from discharging or dumping into Cook's gulch, or into the Cosumnes river, or into any of its tributaries, any mining tailings or mining debris, or any gravel, sand, clay, debris, or refuse matter from the Hill Top mine or any other, or from the ditches, reservoirs, or canals of either of the defendants, and also from causing or suffering to flow into Cook's gulch, or into said river, or into any of its tributaries, any mining tailings, debris, sand, clay, or refuse matter, and also from suffering others to use your water supply for the purpose of washing into Cook's gulch or into the Cosumnes river the material composing any other mine or mining ground.

In witness whereof I have hereunto set my hand and affixed the seal of said court the 12th day of September, 1882.

THOMAS H. BISKEY, *Clerk.*

[SEAL.] By CHAS. M. COGLAN, *Deputy.*

177 EXHIBIT "B B."

(Title of court and cause.)

The plaintiff is hereby notified that on Monday, Oct. 16, 1882, in department two, at the opening of the court, *on* or as soon thereafter as counsel can be heard, the defendants will move the court to dissolve the injunction heretofore granted herein—

First. Because there was and is no sufficient reason for granting said injunction.

Second. Because the said injunction suspends the general and ordinary business of a corporation—to wit, the Amador and Sacramento Canal Company—and was granted without any notice being given of any application therefor, and in the event that the court should refuse to dissolve such injunction the defendants will then and there move to modify the same, as follows:

A. To modify the injunction so as not to effect the Amador and Sacramento Canal Company, because such company is a corporation, and said injunction was granted without notice and suspends the general and ordinary business of such corporation.

B. To so modify said injunction as to omit therefrom the words

178 "also from suffering others to use your water supply for the purpose of washing into Cook's gulch or *with* the Cosumnes river the material composing any other mine or mining ground.

C. To so modify such injunction as to permit the Amador and Sacramento Canal Company to clean out its reservoirs and ditches.

D. To so modify such injunction as to permit the defendants to carry on minning operations, or maintaining a dam across Cook's or big gulch, and impounding the mining tailings, debris, and coarse matter.

On hearing the motion the defendants will rely upon the plaintiff's complaint and upon affidavits filed herewith.

FREEMAN & BATES,
Attorneys for Defendants.

Endorsed: Filed Oct. 10, 1882. Thomas H. Berkey, clerk, by Charles M. Coglan, deputy.

179 EXHIBIT "C."

Opinion.

(Title of court and cause.)

In this case there has been submitted a motion to dissolve or modify the tempo-ry injunction hereinbefore issued.

The main defendant is a corporation. It was organized, as alleged in the complaint, "for the purpose of constructing ditches and car-

rying water in the same to mines, and disposing of the same and mining therewith." It also appears from the complaint and affidavits on file that defendant for many years has had a ditch running from the headquarters of the Cosumnes river to a place called "Hill Top mine," in which it has continuously conveyed to said last-named place; that at said Hill Top defendant owns mines, which it has for many years continuously worked with said water, and that it has also sold water to others to be used in mining at said place.

It does not appear that defendant has been or is engaged in mining, or selling water for mining, at any other place. Hill Top is at the head of Cook's gulch, which empties into the Cosumnes river at Cook's bar. The injunction restrains defendant from dump-
180 ing any tailings into Cook's gulch or into the *the* Cosumnes river, and from selling water to the owner of any mine, the tailings from which would flow into said gulch or river. The injunction was granted without notice.

Counsel for defendant very forcibly argues that under these circumstances the injunction must be totally dissolved, because, without notice, it suspends the "general and ordinary business of a corporation."

Generally a temporary injunction may be granted either before or after notice, but section 531 of the Code of Civil Procedure provides that "An injunction to suspend the general and ordinary business of a corporation cannot be granted, except by the court or a judge thereof, nor can it be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of the State are a party to the proceedings."

Although this provision has always been a part of the statutory law of California, and a similar provision has existed in New York for many years, I find no judicial interpretation of it in either State, and my attention has not been called to any case in point elsewhere.

It may be reasonably mooted whether this provision refers
181 to the stopping of the machinery of a coporation, to the sus-*sus*pension of its corporate functions, the temporary paralyzing of its corporate life, or whether it refers to those acts—to that kind of business—which a natural person may do as well as a corporation; and if to the latter, then what constitutes such a total suspension as would come within the provision?

If the question were submitted to me upon an original application for an injunction I would be less embarrassed in determining it. The conclusion to which I have come is this: While I have doubts as to the power to grant the injunction in this case without notice, I am not so clear about the matter as to feel warranted in declaring it void from the beginning, which would be the result of sustaining defendant on this point, and I have alluded to the question to this extent so that the bar may consider it in future cases.

The motion to dissolve or modify this injunction involves in some measure, though not wholly, the general question of the right of hydraulic miners to continue their business.

Upon that general question—with the exception of a case recently decided by this court—there are no authorities in point and no precedents to follow.

182 As no other country presented such a spectacle as the present conflict between the mining and a part of the agricultural interests of California, so have the courts of no country been called upon to determine such a conflict as that question raises.

But while neither the supreme court of this State nor any of the Federal courts have had occasion yet to pass upon the question it has been determined to some extent at least by a recent decision of this court, Judge Temple presiding. I refer to what is generally known as the Gold Run case.

That case was elaborately prepared and presented. A great many witnesses, scientific and otherwise, from all parts of the country, were examined. Each side was represented by able counsel. The judge before whom it was tried was eminent in his profession and of wide experience on the *nisi prius* and supreme bench. I think, therefore, that in the present unsettled state of the laws I may safely follow his conclusions so far as they apply to this case. From a careful reading of his findings and opinion I take his conclusion to be this: That hydraulic miners have not the right to continue to indiscriminately flow all the tailings from their mines into the streams, to the injury of riparian owners below, but that they

183 may continue to mine, provided that by any means they can and do retain all the heavy material, and allow nothing to escape except light matter which is held in suspension in the water. The learned judge says:

"I have concluded to so find that when the heavier debris is completely impounding mining may be resumed, virtually refusing to hold that the plaintiff may enjoin such operations as only corrupt the water with mud and render it less suitable for domestic and other uses. Perhaps I am somewhat moved to this by the consideration that otherwise mining can never be prosecuted at all.

It will probably be impracticable to impound the lighter portion of the sediment. I confess I shrink from a consequence so far reaching. In some respects the case at bar materially differs from the Gold Run case.

In the latter case the State was plaintiff, and represented, or assumed to represent, all the people and all the interests injured by mining.

It involved questions not only of damage to agricultural lands, but of damage to navigable rivers and the Bay of San Francisco.

The case at bar is between individuals, and involves only damage to the private land of plaintiff. Again, the facts of this case differ materially from those of the Gold Run case.

The motion was submitted upon affidavits.

184 These were conflicting, contradictory, and unsatisfactory. Both parties requested me to visit the premises and make a personal inspection of the mines—the gulch, the dams, and all the surroundings. This I did a few days since, and my conclusions of

fact are founded on both the affidavits and my personal examination.

The hydraulic miners of the upper Sierras, used to piping against banks several hundred feet high, with a corresponding hydraulic pressure, would hardly call these diggings at the Hill Top hydraulic mines at all.

They are situated on the lowest part of the foothills and are composed of small hills or hillocks, surrounding the upper part of Cook's gulch. The gravel deposit ranges in height from a dozen to thirty or thirty-five feet. The average height is certainly much less than 30 feet. The vertical hydraulic pressure is from twenty-five to thirty feet. The water, therefore, comes from the nozzle with very little force to bore into or knock down the banks. The process is more like washing or sluicing than piping. It is aided by occasional blastings with powder, but still the amount of material washed off is necessarily small. The bank is of a reddish color, and is composed of cobbles, smaller gravel, clay, stones, and some sand. The
tailings from the mines, except the very heaviest, run through
185 a cut and flume and dump into Cook's gulch.

About 2,000 feet below the dumps there is a brush dam entirely across the gulch. It is about five hundred feet long, and when I saw it, a few days since, about 9 feet high. It seems to be very firm and strong. I has been raised gradually, as the tailings have accumulated above it. When I saw it there was a solid mass of tailings above it to within a foot or two of the top. Some distance above this dam the water spread out in several channels, which continually change, and seem to deposit all the heavy material. This dam is not intended to be water-tight, but to catch the tailings and allow the water to find its way through the upper part of the brush. From a point three or four hundred feet above the dam, up to the dump, the gulch is somewhat steep, but below the dam the grade is very light and the surface quite flat.

At a point 2,270 feet below defendant has constructed another dam, which is made of timbers and earth, and is water-tight. This dam backs the water so as to make a point about 360 feet wide and several hundred feet long; it could be easily made wider and higher. Attached to this dam by a flood-gate is a broad flume, which carries
the water to a point about 300 feet from the river, where they
186 are again dumped into the gulch. Nothing seems to pass into the river except such light material as is carried in suspension. Heavy material, in order to get into the river, would have first to pass over at least 1,500 feet of surface before it reached the tailings held back by the brush dam.

It would then have to be carried over the level surface of such tailings and through the dam, which is not likely to happen. It would then have to pass over a nearly level surface for about 1,800 feet, and then through a pond of water four or five hundred feet, and up and over the flood-gate of the lower dam. Such an occurrence is scarcely possible; certainly not probable. All this, however, is upon the basis that defendant, either by enlarging the present dams as necessity may require or by building additional

ones shall keep the gulch up to its present capacity of holding tailings, which it will be its duty to do. Between the present dams there is room for erecting several others. The average width of the gulch between these dams is at least 500 feet; and I see no difficulty, with proper care and diligence, in restraining the heavy material for a long time to come—perhaps until the mines shall have been exhausted.

But it is claimed by plaintiff that the dams are liable to break, and suddenly precipitate upon the lands below the
187 accumulated mass of tailings. Of course any dam may break, although it is evident that a dam filled nearly to the top with solid earth has to bear no such pressure as a dam of similar height filled with water. Whatever might be this danger in large rivers swept in flood times by torrents gathered from drainage areas of hundreds of thousands of acres, I think that the apprehended danger in this case has no reasonable foundation.

The drainage area of Cook's gulch is of the most limited character. Its entire length from the Cosumnes river to the uppermost point from which rain-water could naturally flow into it is only one mile and a half. From the present brush dam to the upper end of the gulch is only three-quarters of a mile.

The average width of the level part is from 400 to 500 feet, and the distance from either side to the top of the hill is very short. I do not think that the average distance from the top of the hill on one side to the top of the hill on the other side is greater than three-quarters of a mile. It is evident, therefore, that no considerable amount of natural water, certainly no dangerous torrent, is ever likely to flow down said gulch.

If the dams should break the only danger would be from the water flowing from defendant's ditch, the amount being more
188 than 1,000 inches.

But in case of danger the defendant could immediately turn the entire water of the ditch off and away from Cook's gulch, and it would be both its duty and interest to do so.

Considering these circumstances, and the further fact that plaintiff's land is more than sixteen miles below the mouth of the gulch, I see no just cause for plaintiff's fear of injury from the breaking of the dams.

If the court of the last resort shall declare the law to be that the miner has no right to pollute the stream at all, then, of course, defendant will have to be perpetually enjoined from working its mines; but assuming the present state of the law upon the subject to be as I have stated it, and as it was declared in the Gold Run case, then I think the injunction should be so modified as to allow defendants to work its mines in accordance with the views and upon the conditions herein set forth. Of course this decision is based upon the particular facts of this case, and is not to be considered a precedent for cases where the facts are materially different.

An order will be prepared and entered modifying the injunction in accordance with these views, and defendants must exercise

189 the greatest diligence in keeping its dam up to the present efficiency, or the modified injunction will be considered as violated.

March 5th, 1883.

T. B. McFARLAND,
Superior Judge.

Endorsed: Filed March 5, 1883. Chas. M. Coglan, clerk, by W. B. Hamilton, deputy.

190 EXHIBIT "D."

Order.

(Title of court and cause.)

The motion of the defendants to dissolve the injunction herein having heretofore been tried, argued, and submitted, and the court being now fully advised, it is ordered that the motion to dissolve the injunction be, and the same is hereby, denied; and it is further ordered that the injunction heretofore issued herein, and the order directing the issue of the same, be, and the same are hereby, modified by adding thereto the following words: "But nothing herein contained shall be deemed to prohibit the defendants from working their mine or mines, or issuing their supply of water, and maintaining, protecting, and caring for their reservoirs and ditches, so long as they shall continue to impound and restrain the coarse debris, and to maintain and keep in repair their different restraining dams and settlers, in like manner and with like efficiency as on the 5th day of March, 1883, or shall make and maintain new dams, when necessary, in accordance with the written decision of this court filed herein on the fifth (5th) day of March, A. D. 1883.

Done in open court, March 12, 1883.

[SEAL.] T. B. McFARLAND,
Superior Judge.

191 Attest: CHAS. M. COGLAN, *Clerk*,
By W. B. HAMILTON, *Deputy.*

Endorsed: Filed March 12, 1883. Chas. M. Coglan, clerk, by W. B. Hamilton, deputy.

192 EXHIBIT "H," Annexed to the Affidavit of Jennie B. Ritter.

Whereas the county of Sacramento desires to restrain the miners working by hydraulic process on the Cosumnes river and using the bed thereof as a place for the deposit and wastage of the tailings and debris from their mines; and

Whereas it is desired to bring such suit in the circuit court of the United States for the district of California, and in the ninth circuit; and

Whereas George Cashman has brought, or is about to bring, such suit in said circuit court against the miners working on the Cosumnes river by hydraulic process; and

Whereas the county of Sacramento is directly interested in the said suit and in the subject-matter of litigation, and the same is brought for its benefit, the county being unable to sue in such court; and

Whereas the county of Sacramento by a resolution duly passed by its board of supervisors on the 22nd day of September, 1885, has agreed to pay the costs and expenses of such suit and to keep the said George Cashman safe and harmless from all counsel fees, costs, and charges to be paid or incurred therein:

193 Now therefore this contract and indenture, made in pur- of said resolution between the County of Sacramento, the party of the first part, and George Cashman aforesaid party of the second part, witnesseth:

1st. That the party of the first part, the said County of Sacramento, does hereby stipulate, covenant, and agree to supply the said George Cashman with the services of competent attorneys, to wit, A. L Rhodes, S. C. Denson, and Robert T. Devlin, to institute, conduct, and manage such suit; and does further covenant and agree to pay all the charges, costs, and expenses thereof or connected therewith, and to hold and keep him, the said George Cashman, safe and harmless from any costs, counsel fees, charges, or expenses to be paid or incurred in the institution, conduct, and prosecution of the said suit.

The said George Cashman, the party of the second part, does hereby stipulate, covenant, and agree not to compromise, dismiss, or settle the said suit without the consent of the county of Sacramento, and to allow the said county, and the attorneys aforesaid in its behalf, to manage and conduct the said suit to the same extent and in the same manner as if such suit had been commenced by

194 and was prosecuted in the name of the said county of Sacramento.

In witness whereof the parties hereto of the first part, by the chairman of its board of supervisors, he being by a resolution of said board passed September 22nd, 1885, duly hereunto authorized, have hereunto set their hands and seals this 26th day of September, 1885, this contract being executed in duplicate, each party retaining one.

[Seal of the Board of Supervisors of the County of Sacramento.]

(Signed) COUNTY OF SACRAMENTO,
By L. H. FASSETT,
Chairman Board of Supervisors.
GEORGE CASHMAN. [SEAL.]

Indorsed: Filed October 6th, 1885. W. B. Hamilton, clerk.

195 EXHIBIT "I."

SAN FRANCISCO, *June 22d*, 1885.

Mr. Byam, sup't Hill Top mine.

DEAR SIR: I have made the computations of the survey recently made by Pierson, Bassett, and myself to ascertain the amount of tailings restrained by your dams in Cook's ravine, and also the con-

tents of the pits pointed out to us by yourself and foreman as having furnished such tailings. The result has been a surprise to me, for I found that the total amount of tailings restrained by the dams since October, 1882, was very much greater than the contents of the pits. It is obvious, therefore, that some of the pits were omitted in our survey, and I wish you would do me the favor of sending me their dimensions, namely, their average length, width, and depth, as near as you can get at them, in order that I can complete my computations and arrive at a correct comparasion. The omitted pits are, probably, the Hurley, the Martin, and Welch, and perhaps a few others. I think it will be to your interest to furnish this information, for I believe a correct comparison will show that the dams have done all the work called for in the McFarland decree.

Yours truly, G. F. ALLARDT.

(Here follows diagram marked p. 196.)

197 Endorsed: Filed November 2d, 1885. L. S. B. Sawyer, clerk.

198 *Return to Order to Show Cause.*

In the Circuit Court of the United States in and for the District of California, 9th Circuit.

GEORGE CASHMAN, Complainant,

vs.

AMADOR AND SACRAMENTO CANAL COMPANY. *et al.*, Defendants.

The defendants, Jeremiah Bliss and Giddeon Devore, appear in said suit in said court and show cause why a temporary injunction should not be ordered or issued as prayed for in complainant's bill, as follows:

I.

Because the said Cashman was made complainant in said suit by collusion with the board of supervisors of the county of Sacramento, in the State of California, for the purpose of creating a case cognizable under the act of Congress passed March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes."

II.

199 That all the facts stated and charged in the said bill against these defendants and the matters contained in the several affidavits filed by said complainant are distinctly denied by these defendants.

III.

Because it appears from the whole case made that a proper cause for injunction does not exist.

And these defendants move that this suit be dismissed for want of

jurisdiction, and because that it is shown that this suit is commenced and prosecuted in violation of the provisions of section five of said act of Congress.

McKUNE AND GEORGE,
Solicitors for Defendants Bliss & Devore.

200 *Aff'd'v't of J. Bliss.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the District of California, 9th Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*

Jeremiah Bliss, being duly sworn, deposes and says that he is a farmer and stock raiser and has resided near Forrest Home, Amador county, California, for 17 years last past.

That he owns the land in which is situate the Munn Hill mine.

That said mine was nearly worked out about thirty years ago.

That for many years no mining has been done at said mine until about December, 1884, when affiant commenced to work said mine, using from 30 to 35 miners' inches of water taken from the ditch of the Plymouth Consolidated Gold Mining Company, and
201 worked until some time in May, 1885.

That in said mining he used canvas hose and rubber hose, 1¼-inch nozzle, with pressure from 6 to 15 feet, to throw the water on the ground, and sluicing off the tailings in the usual way.

That these tailings were all deposited on the farm of Charles A. Cramer and spread over his land, flowing to the south.

That the said Cramer took pains to spread the water containing the tailings over his land, and when the water left his land it was clear.

That the water so used by affiant did not at any time flow to the Cosumnes river or any of its tributaries, but the whole thereof was absorbed by the soil without reaching said river or any of its tributaries.

That the said mine of affiant is nearly worked out.

That he does not intend to continue working during the winter, and by taking care of all the tailings thereof without pouring them into any river.

That affiant has never threatened to continue said mining or to pour any debris into the said or any river, and has never threatened and does not intend to do any act to the injury of complainant.

JEREMIAH BLISS.

Subscribed and sworn to before me this 28th day of October, 1885.
[NOTARIAL SEAL.] WILBUR F. GEORGE,
Notary Public, Sacramento Co., Cal.

202 *Aff'd'v't of C. A. Cramer.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,

vs.

THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

Chas. A. Cramer, being duly sworn, deposes and says: That he is a farmer, residing about 1 mile east from Forest Home; that his land is adjoining and contiguous to the land owned and formerly mined by Jeremiah Bliss, one of the defendants herein; that the claim formerly operated by Jeremiah Bliss is situated about 1¼ mile east from Forest Home, and is known as the "Mun Hill mines;" that said mines have never been, to affiant's knowledge, operated by said defendant Bliss or his employees by means of a Monitor or hydraulic chief; that all mining conducted in said claim was conducted
203 by means of hose and ground sluice; that during the time of the operations of said mine affiant requested said defendant Bliss and his employees to dump the debris of said mine upon his land for the purpose of improving said land for agricultural purposes. Affiant further says that said mine has not been operated by said Bliss or any other person since May 31st, 1885.

That during the period of the last 30 years affiant has known said mine, and that none of the debris from said mines could or would pass into the Cosumnes river.

That the reason therefore is that the water-shed is to the south instead of to the north.

CHAS. A. CRAMER.

Subscribed and sworn to before me this October 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

204 *Aff'd'v'ts of Doty et al.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,

vs.

THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

I. J. Doty, Hillry Thompson, John Conlin, Hans Ronna, George Anderson, Eli S. Taylor, W. S. Jennings, Chas. A. Ruman, Reuben Ball, H. S. Byam, Chas. Hilton, Joshua Hath White, David Devore,

L. C. Moore, and John W. Heath, being duly sworn, on his oath, each for himself and not one for the other, deposes and says—

That he is acquainted with Jeremiah Bliss, one of the defendants herein; that he is also acquainted with the mine owned by said Bliss and formerly operated by him.

That no work or mining has been done in or on said claim or or mine since the month of May, 1885.

205 That the said mine is situate about one and a half (1½) mile- east from Forest Home, in Amador county, State of California.

That no mining has been done at any time within the last two years in said claim by defendant Bliss or his employees with Monitors or hydraulic chiefs, but during all the time that said mine was operated by said Bliss the work was done in the most primitive manner; that prior to May, 1885, and while said Bliss was operating said mine, the debris or debritus matter of said mine was deposited upon the land of Chas. A. Cramer, which adjoins the land upon which said mine is situate; that the debris was dumped upon said land, as affiant is informed and believes, and so states the fact to be, at the request of Cramer and for the purpose of improving said Cramer's land for agricultural purposes; that the fall of the ground from said mine is to the south, while the Cosumnes river lies to the north, and it is impossible for any water, if there was any, to in any way find its course to the Cosumnes river.

I. J. Doty, farmer.

his

Hilry x Thompson, sheep herder.

mark.

Witness his mark:

W. A. Gett, Jr.
John Conlin.
Hans Ronna.
George Anderson.
Eli S. Taylor.

206 W. S. Jennings, agent A. & S. C. Co.

Charles A. Ruman.
Reuben Ball.
H. S. Byam.

Subscribed and sworn to before me this October 26th, 1885.

[NOTARIAL SEAL.] W. A. GETT, JR.,

Notary Public, Sacramento County, Cal.

Charles Hilton, farmer.
Joshua Heath White, miner.
David Devore, farmer.
Loyal C. Moore, store business.
John W. Heath, merchant.

Subscribed and sworn to before me this October 27th, 1885.

[NOTARIAL SEAL.]

W. A. GETT, JR.,

Notary Public, Sacramento County, Cal.

207 *Aff'd'v'ts of Heath et al.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL COMPANY, H. S. BYAM, *et al.*, Defendants.

E. B. Heath, Chas. A. Cramer, H. S. Byam, George Anderson, I. J. Doty, Charles A. Ruman, W. S. Jennings, Chas. Hilton, Joshua Hath White, David Devore, L. C. Moore, and John W. Heath, being duly sworn, on his oath, each for himself and not one for the other, deposes and says that he is acquainted with Giddeon Devore, one of the defendants in the above-entitled case in the above-entitled court; that the mine described in the "bill of complaint" in the above-entitled court and cause, situate near and a little west of Forest Home, "Amador county, California," is on "Arkansas creek."

That since the month of May, 1883, defendant Devore
208 nor none of his employees or any other person or persons for him or themselves have deposited or worked said mines or claims.

That in the month of March, A. D. 1885, defendant Devore had removed from the claim or mines all the pipes, boxes, sluices, and since that time there has been no appliances of any kind in said claims to work said claim with.

E. B. Heath, common laborer.
Chas. A. Cramer, farmer.
H. S. Byam.
George Anderson.
I. J. Doty, farmer.
Charles A. Ruman.
W. S. Jennings.

Subscribed and sworn to before me this October 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

Eli S. Taylor, farmer.
Joshua Heath White, miner.
David Devore, farmer.
Loyal C. Moore, store business.
John W. Heath, merchant.

Subscribed and sworn to before me this October 27th, 1885.
[SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

Endorsed: Filed November 2nd, 1885. L. S. B. Sawyer, clerk.

209 *Return of Welch & Gallogly to Show Cause.*

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY, Defendants.

The defendants, Martin Welch and James Gallogly, appear in said suit in said court and show cause why a temporary injunction should not be ordered or issued as prayed for in the complainant's bill as follows:

I.

That the said Cashman was made complainant in said suit by collusion with the board of supervisors of the county of Sacramento, in the State of California, for the purpose of creating a case cognizable under the act of Congress passed March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes."

II.

210 That all the facts stated and charged in the complainant's said bill against these defendants and the matters contained in the several affidavits filed by said complainant are distinctly denied by these defendants.

III.

Because it appears from the whole case made that a proper cause for injunction does not exist.

And these defendants move that this suit be dismissed for want of jurisdiction, and because it is shown that this suit is commenced and prosecuted in violation of the provisions of section 5 of said act of Congress.

McKUNE AND GEORGE,
Solicitors for Def'ts, Welch and Gallogly.

211 *Aff'd'v't of Martin Welch.*

STATE OF CALIFORNIA, }
County of Sacramento, } *ss:*

In the Circuit Court of the United States in and for the 9th Circuit District of California,

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants.

Martin Welch, being duly sworn, deposes and says:

That he is a defendant in said case, and that he and the defendant James Gallogly are copartners in mining at a place called Welch and Gallogly claim, about one mile northwest of the Hill Top mine,

and that neither affiant nor said Gallogly has mined at any other place within the year last past.

That affiant and said Gallogly in mining their said claim use about 200 inches of water taken from the ditch of the corporation defendant, which water so taken is of the quality described in the
212 affidavits of H. S. Byam and Jennie B. Ritter, filed in this suit.

That the face of the said claim does not exceed 30 feet in depth, and the hydraulic pressure through the monitor used by affiant and his partner does not exceed 30 feet.

That at their said mine affiant and his said partner use one monitor and one fork, the latter being a- eleven-inch pipe, to which are attached two lines of six-inch hose, the water being directed against the gold-bearing earth through a two and one inch nozzle.

That there is no water running to and from his said mine except that used by said partners and brought from said ditch.

That there is no water-shed by which water is in winter poured into Cook's gulch from said mine or to sweep down the tailings thereof to said gulch.

That Exhibit "A," hereto attached, is a rough sketch showing the directions taken by the tailings from said mine and the means resorted to for their distribution over the land of affiant.

That the said tailings are carried from said mine through a flume, marked "Flume" in red ink, to a gulch called Hawk's gulch to a dam, number one, on said diagram.

213 That affiant and his partners commenced to work at their said mine about a year ago.

That dam number two was then constructed, having been in use for restraining debris for more than two years.

That said dams are constructed on the same principle and like the dams on Cook's gulch.

That dam number one has, since its construction, retained all the coarse sand, gravel, and boulders, with most of the finer debris, and has capacity for a much larger amount.

That all the finer debris not collected and retained by dam number one is restrained by the other dams, numbered 2, 3, 4, and 5 on said diagram.

That the slope is gentle, and the water, when filtered through said dams, is free from all impurities taken up by its use in mining, and when poured into the Cosumnes river it has, during the year last past, been wholly free from anything harmful to the said river or to the farm of said Cashman.

That the water from said mine of affiant, after passing through dam number 5, spreads out over low lands covered with
214 willows, nearly level, as shown on said Exhibit A, marked Willow swamps, and there, if any fine debris happen to pass said dams, the water is further settled and filtered.

That the surface of the soil lies in such a manner that the said water, on leaving said willow thicket, converges and passes through a ditch, cut through alfalfa meadows, and finally reaches Cook's gulch, as shown on said diagram, wholly freed from mining debris

of any kind, except fine, impalpable coloring matter, with which it was charged before reaching the mine of affiant.

That neither affiant nor said Gallogly have, at any time within the last two years, claimed a right to dump their tailings into the Cosumnes river; but both have claimed, and do claim, a right to carry on mining as a legitimate business by restraining and impounding all their tailings so as not to harm plaintiff or others.

That using the water for working their said mine from the canal of the corporation defendant, affiant and his said partner have understood, and now claim, their right to work — mine under the regulations prescribed by the court in the case of Hobbs against The Amador and Sacramento Canal Company, and they have kept their works and restrained the tailings from said mine strictly in accordance with the rule laid down for their guidance by the court
215 in that case.

MARTIN WELCH.

Subscribed and sworn to before me this 29th day of October, 1885.
[NOTARIAL SEAL.] WILBUR F. GEORGE,
Notary Public, Sacramento County, Cal.

216 *Aff'd'v'ts of Patterson et al.*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In the Circuit Court of the United States in and for the 9th Circuit, District of California.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Defendants.

Messrs. Patterson, H. M. Crawford, W. S. Jennings, Fernando Prothero, J. H. White, Jas. J. Gaffney, Jas. Barry, Wm. Belding, J. T. Hurley, J. P. Hurley, E. Breeding, John Sweat, A. Neal, Chas. Bennett, Park Brown, A. Slitz, John Lott, J. Kellogg, S. Hamlin, R. Ball, Jos. Barney, Wm. Barber, Albert Barber, Ambler Barber, U. S. Wilber. F. Michel, F. W. Schmitt, Eli S. Taylor, Thos. F. Olive, W. A. Ford, Thos. Finn, Hans Ronna, Fred. Brown, Patrick Flynn, John Gaffney, Jas. Jordan, N. Tush, Jas. Nightingale, J. Bliss, G. C. Ferguson, John Conlin, Henry Thompson, Jas. Carter, Wm.
217 Keegan, Geo. Anderson, Chas. A. Roman, John W. Heath, J. H. Lowry, John H. Gaffney, Ed. Dunn, I. Quiros, Rob't Allen, Loyal C. Moore, Frank McCulloch, Fred. Wenzel, I. J. Doty, Bernhard Fischer, Peter Dickinson, Thos. J. Hilton, Chas. A. Cramer, J. T. White, Jas. W. Heath, A. H. White, Jas. Carbine, John Long, David Devoe, Chas. Hilton, Gideon Devoe, Geo. Keith, Q. Clements, J. W. Cushman, Benj. Perkey, Thos. W. Carbine, N. Brown, Ed. Neal, W. A. Brown, being duly sworn, each for himself deposes and says:

That he is acquainted with Martin Welch and James Gallogly and their mining works, about a mile from the Hill Top mine.

That they have examined the mine of the said Welch and Gallogly and the restraining dams constructed by them to restrain their tailings, and have also examined the class of tailings impounded by said dams, and that said dams have actually restrained not only all of the cobbles, gravel, and coarse sand, but also the finer debris, passing nothing into the Cosumnes river but fine impalpable material held in suspension by the water, and not injuring said river or the land of said Cashman.

Moses Patterson.
H. M. Crawford.
218 W. S. Jennings.
Ferdando Prothero.
Joshua Heath White, miner.
James J. Gaffney, farmer.
James Barry, miner.
William Breeding, farmer.
J. T. Hurley, miner.
J. P. Hurley, carpenter.
Emmett Breeding, farmer.
John Sweat, potter.
Alonzo Neal, sheep shearer.
Charles Bennett, sheep raiser.
Park Brown, saloon keeper.
A. Slitz.
John Lott.

Witness his mark:
W. A. Gett, Jr.
his
J. x Kellogg.
mark.
Simeon Hamlin.
Reuben Ball.
Joseph Barney.
his
William x Barber.
mark.

Witness: W. S. Jennings.
his
Albert x Barber.
mark.

Witness: W. S. Jennings.
Ambler Barber.
U. S. Wilber, farmer.
Francis Michel, farmer.
F. Wm. Schmitt, farmer.
Eli S. Taylor, farmer.
219 Thos. P. Olive, saloon-keeper.
W. A. Ford, miner.
Thomas Finn, farmer.
Hans Rönna.
his
Fred. x Brown, farmer.
mark.

Witness: W. S. Jennings.
Patrick Flynn, miner.
John Gaffney, farmer.
James Jordan, miller.
N. Tusch, farmer.
James Nightingale, stock raiser.
J. Bliss, stock ra-sor & minor.
G. C. Ferguson, stock ra-sor & rancher.
John Comlin.
his
Henry x Thompson, sheep herder.
mark.
Witness his mark:
W. A. Gett, Jr.
his
James x Carter.
mark
Witness: W. S. Jennings.
W. Keegan.
George Anderson, farmer.
Charles A. Ruman, stock raiser.
John W. Heath, merchant.
O. H. Lowry, carpenter.
John H. Gaffney, farmer.
Edward Dunn, farmer.
Ygnacio Quiros.
Robert Allen, farmer.
Loyal C. Moore, store business.
Frank McCulloh, farmer.
220 Fred. Wenzel, blacksch*mit*-.
I. J. Doty, farmer.
Bernhard Fischer, farmer, Forest Home.
Peter Dickinson, farmer.
Thomas J. Hillton, farmer.
Chas. H. Cramer, farmer.
I. T. White, farmer.
James W. Heath, farmer.
A. H. White, laborer.
his
James x Carbine, teamster.
mark.
Witness: W. S. Jennings.

Subscribed and sworn to before me this October 26th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento County, Cal.

John Long, farmer.
David Devore, farmer.
Charles Hilton, farmer.
Gideon Devore, farmer.
George Kreth, farmer.
Q. Clemons, farmer.

J. W. Cushman, stage driver.
his
Benj. x Perkey, stock raiser.
mark.

Witness his mark:
W. S. Jennings.
Thomas W. Carbine, blacksmith.
N. Brown, farmer.
Ed. Neal, sheep shearer.
221 W. A. Brown, bla-ksmith.

Subscribed and sworn to before me this October 27th, 1885.
[NOTARIAL SEAL.] W. A. GETT, JR.,
Notary Public, Sacramento Co., Cal.

(Here follows diagram marked p. 222.)

223 *Aff'd'v't of Tyler.*

STATE OF CALIFORNIA, } ss:
County of El Dorado, }

In the Circuit Court for the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendants.

B. S. Tyler, being duly sworn, says: That he resides on the "south fork" of the Cosumnes river, above the lower dam and ditch of the Plymouth Consolidated Mining Company; that by occupation he is a rancher, and owns a ranch situated above said dam and ditch on said "south fork," and has cultivated the same for the last thirty years and more; that the said "south fork" above said lower dam and ditch is quite level and in many places very wide; that the tailings which come down said "south fork" above said dams do not in the least interfere with the forming the bottom land along said "south fork;" that in many places such bottom or flat land is from 200 to 300 yards wide and four miles in length; that the tail-
224 ings from the mines worked on said "south fork" and its tributaries do not reach as far down as the lower dam and ditch, which is near Bridgeport, on said south fork; that the water in said "south fork" just below said lower dam is clear, except in times of freshets; that said lower ditch takes up all of the said south fork waters at the dam on said "south fork," together with all of the sand and tailings which flow down from above; that one Ball has a ranch on said ditch, and for many years past has turned what tailings and sand runs in said ditch onto a field which is about four miles from the head of said ditch, and that for ten years he has not collected from the same enough sand and tailings to fill up 30 acres two feet in depth; that at said lower ditch there is but very little sand or tailings, not enough to materially effect or fill up said ditch; that they can see no difference in the flow of sand or sediment in

said south fork since mining has ceased in the mining claims of said Hale, Baughman, and Ball from the flow while said defendants were mining in their said claims at "Indian Diggings;" that affiant's dwelling is situated on the north bank of said south fork; that the "Tyler ditch," which takes the water of Indian and Scott's creeks, was constructed by affiant, and runs into said south fork, a few yards above affiant's house; that the dam at the head of said Tyler ditch is constructed of pine trees with the tops up stream, and is ten feet in height and seventy-five feet in length from
225 bank to bank, and is a permanent and solid structure; that about one hundred yards from the head of this ditch and from said dam and in said ditch is, and has been for 15 years, a sand box made for the purpose of collecting the sand and debris which come down said Indian and Scott's creeks; that said sand box is about 3 feet wide, 4 feet deep, and 75 feet long; that affiant has attended this sand box for years and cleaned it out; that no coarse material ever comes into said sand box; that the same is sand and slum or slickens; that said sand and slum is caught in said box and is usually let out once in a while; that said dam catches all of the debris that comes from all of the mines above and runs the same into said "Tyler ditch;" that said water and fine debris thence is emptied into said south fork at affiant's dwelling; thence it runs down said south fork about one-fourth of a mile to what is known as the "Simpson dam" and ditch; that said "Simpson dam" is constructed of sawed timber and is a solid & permanent dam eight feet in height and sixty feet in length and is eight feet deep. This dam takes up all of said waters of Indian & Scott's creeks, and turns the same with all of the debris which runs in said south fork with Indian Diggings & Scott's creeks, and conveys the same to Plymouth, and there is used to propel the machinery of the Plymouth Consolidated Mining Company's quartz mills and other machinery; thence this water runs into Dry creek; thence into the Mokolumne
226 river; that affiant has lived on said south fork and been engaged in farming thereon for more than 30 years; that said south fork from a little below Bridgeport runs through a valley which is from one to two miles wide and over four miles long; that said Indian Diggings creek and south fork have but very little fall; that none of the sand or debris from the mining operations on Indian Diggings creek passes the lawer dam of said company, but is all taken up in the three dams and run in the ditches to Plymouth; that the lower dam on said south fork, which is a little below Bridgeport, is ten feet high and seventy-five feet long, is permanent and solid, and turns all of the debris from above into the ditch, which also runs to Plymouth.

B. S. TYLER.

Sworn to and subscribed before me this 27th day of October, 1885.
[NOTARIAL SEAL.] GEO. G. BLANCHARD,
Notary Public.

Endorsed: Filed Nov. 14, 1885. L. S. B. Sawyer, clerk.

years, my residence upon the same being continuous and unbroken. There is at this time, and ever has been since my residence upon said land, a creek, river, or *slew* called the Laguna (or more familiarly known and styled the Lagoon) flowing through the entire width of said land at a distance of three-quarters ($\frac{3}{4}$) of a mile. I have never during my residence upon said land sustained any damage or damages from the overflow of said creek, river, or slough known as the Lagoon that might be caused by the filling up of said creek, river, or slough with debris, sand, gravel, cobble-stones, or refuse from the mines in Irish Hill, in Amador county, operated
232 by George Philip, Ira P. Lambing and Brothers, more familiarly known as the Lambing Brothers. Deponent further says that there are no evidences whatever of the mining operations carried on at Irish Hill, in Amador county, by George Philip and Lambing Brothers, but, on the contrary, the water flowing in said creek, river, or slough known as the Lagoon is perfectly clear and absolutely free from any signs of the mining operations at the place and by the persons above referred to. Deponent further believes and says that no possible damage can occur to the property owners along the banks of the creek, river, or slough known as the Lagoon, running through the said county of Sacramento and carrying the water coming from the mines in Irish Hill, Amador county, and operated by George Philip and the Lambing Brothers.

J. B. GATES.

Subscribed and sworn to before me on this 28th day of October, 1885.

[NOTARIAL SEAL.] J. M. SMITH,
Notary Public of Sacramento County.

Endorsed: Filed Nov. 17, 1885. L. S. B. Sawyer, clerk.

233 *Aff'd'v't of Makee*

STATE OF CALIFORNIA, } ss:
County of Sacramento, }

In United States Circuit Court, Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et als.*, Defendants.

George N. Makee, being duly sworn, deposeth and sayeth: I am a male citizen of the United States; over the age of twenty-one years; a resident of Sacramento county, State of California; I reside upon, am in the possession and owner of, two hundred and eighty acres of land in said Sacramento county and State aforesaid; I have resided upon continuously the said premises for the period of twenty-two (22) years; there is flowing through said premises a creek, slough, or river known as the Laguna (or more familiarly known and styled the Lagoon), which said stream runs or flows through the northeast quarter of the S. E. $\frac{1}{4}$ of said premises for a distance of one-half ($\frac{1}{2}$)

a mile, more or less; since deponent's residence upon said premises he has never sustained any damage from the overflow of said stream that might be caused by tailings, debris, gravel, sand, or refuse coming from mines at Irish Hill, in Amador county, operated by George Philip, Ira P. Lambing and Brothers, more familiarly
234 known as Lambing Brothers; and deponent further says that from his own knowledge and observation he firmly believes and knows that along the *slew*, river, or creek known as the Lagoon above described there can be no evidences of the mining operations carried on at Irish Hill by George Philip and Lambing Brothers, above referred to; that along said channel of said *slew*, river, or creek there are no obstructions of debris, gravel, sand, cobble-stones, or other refuse, but said channel is perfectly clear from all such obstructions above referred to; and deponent further believes, from his knowledge and experience, that the continuations of said mining operations in said locality could in nowise work an injury upon property holders residing on the banks of the Lagoon, in said Sacramento county.

GEORGE N. MAKEE.

Subscribed and sworn to before me this 27th day of October, A. D. 1885.

[NOTARIAL SEAL.] J. M. SMITH,
Notary Public of Sacramento County.

Endorsed: Filed Nov. 17, 1885. L. S. B. Sawyer, clerk.

235 *Aff'd'v't of I. P. Lambing.*

In the United States Circuit Court, Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
THE AMADOR AND SACRAMENTO CANAL CO. *et als.*, Defendants.

In the Circuit Court of the United States for the District of California, in the Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et al.*, Defendant-.

Ira P. Lambing, being duly sworn, says: I have, in copartnership with my brother, Frank A. Lambing, been carrying on, operating, and conducting, at Irish Hill, in Amador county, a hydraulic mine. I commenced operations upon said mine on the 3d day of December, A. D. 1884, and continued in the actual operation thereof up to and including the 26th day of July, A. D. 1885—a period of about 8 months.

During the period of the operations above referred to I used, in conducting the same, seventy-five inches of water, purchased from George Philip. The system of hydraulic operations gener-
236 ally employed are used by me, but during the period above referred to I frequently and continued frequently [to] move

the sluice-boxes used, change the course of the tailings or race, thereby restraining the gravel, sand, debris, and refuse upon the sides of the hills, and in the ravines or gulches. The water flowing from said mines first entered at the head or source of a dry ravine or gulch known as the Greasewood gulch, which said gulch is perfectly dry, with no natural water-course, but remains in its natural state, no water ever running or flowing in same unless coming from the mines above referred to when in operation. The water from said mines, after passing down through Greasewood gulch for a distance of three miles, intersects, flows, or empties into the creek, slough, or river known as the Willow creek, through which a small head of water is generally flowing. The water is then conveyed by Willow creek for a distance of six miles, then emptying into the Laguna, a narrow channel, creek, slough, or river more familiarly known and styled the Lagoon. From thence the water first empties into the head of Greasewood gulch, [is] conveyed three miles, then emptiedinto Willow creek and conveyed six miles, takes its course, and in various directions, maneuvers, and windings finally intersects, connects, empties, and flows into the Cosumnes (river, a large, living stream, which rises high in the summit of the Sierra Nevada
237 mountains), at a distance of about thirty-five miles from the head of Greasewood gulch, or where the water- used in the mining operations are first emptied, complainant in the above-entitled action living twelve miles from the mouth of the Cosumnes. The water and course above described and used by me in carrying on my mining operations at the times and place above referred to empty in the Cosumnes three miles from its mouth, leaves the property of plaintiff nine miles above the intersection of the Cosumnes by the Lagoon, and thus makes it an absolute impossibility for the lands of plaintiff to be in any way damaged or in any manner affected by the waters flowing in the creeks, sloughs, and rivers above mentioned and coming from the mining operations of George Phillips and myself.

IRA P. LAMBING.

Subscribed and sworn to before me this 30th day of October, A. D. 1885.

[NOTARIAL SEAL.] J. W. SURFACE,
Notary Public, Amador County, Cal.

238 *Aff'd'v't of G. W. Phillips.*

STATE OF CALIFORNIA, *County of Amador:*

In the United States Circuit Court, Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO., *et als.*, Defendants.

G. W. Phillips, being first duly sworn, says: I have been engaged in hydraulic mining operations at Irish Hill, in Amador county, State of California, since on or about the 12th day of January, A. D.

1885; the said mining operations have been continuous up to or about the 20th day of July, A. D. 1885; in operating the same I use 200 inches of water; the gravel, sand, cobble-stones, and other refuse are dumped upon the hillsides and ravines that surround said locality; the water from said mine flows first into Greasewood gulch, then into Willow creek, thence into the Lagoon, intersects or flows into the Cosumnes river about three miles from its mouth, making a distance from the head of Greasewood gulch of thirty-five miles. It is an absolute impossibility for the waters from the mine above mentioned to effect in any way the lands of plaintiff in the above-entitled cause, as they are situated at a distance of about nine
239 miles above the intersection of the Cosumnes by the Lagoon.

There are to my own knowledge no evidences whatever of mining operations above referred to at the point of the intersection of the Cosumnes by the Lagoon.

G. W. PHILLIPS.

Subscribed and sworn to before me this the 29th day of October, A. D. 1885.

[NOTARIAL SEAL.] J. W. SURFACE,
Notary Public, Amador County, California.

Endorsed: Filed Nov. 17, 1885. L. S. B. Sawyer, clerk.

240 *Aff'd'v't of Hearty.*

STATE OF CALIFORNIA, *County of Amador,* } ss:

In the United States Circuit Court, Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et als.*, Defendants.

Patrick C. Hearty, being first duly sworn, deposes and says: I am a resident of Amador county, State of California. I am well acquainted with the mining operations *operations* carried on at Irish Hill by George Phillips, Ira P. Lambing and Brothers, familiarly known and styled Lambing Brothers. The said mining operations are carried on respectively by George Phillips and Lambing Brothers, George Phillips using 200 inches of water and Lambing Brothers 75 inches.

The gravel, sand, debris, clay, and other refuse from said mines are dumped on the sides of the hills and the ravines surrounding the locality.

The water from said mine flows first into Greasewood gulch, then into Willow creek, and then into the Lagoon. The Lagoon intersects the Cosumnes three miles from its mouth, and at a distance of 35 miles from the head of the Greasewood gulch. Deponent firmly believes that complainant can sustain no damage whatever
241 from water coming from the mining operations at Irish Hill and carried on by George Phillips and the Lambing Brothers or in any way be affected by the same.

Deponent believes and knows the above facts to be true from his own knowledge and personal observations.

The mining operations at Irish Hill have been carried on since the year 1854 to deponent's own knowledge.

PATRICK HEARTY.

Subscribed and sworn to before me this the 30th day of October, A. D. 1885.

[NOTARIAL SEAL.] J. W. SURFACE,
Notary Public, Amador County, Cal.

Endorsed: Filed Nov. 17, 1885. L. S. B. Sawyer, clerk.

242 *Aff'd'v't of Eugene Dooley.*

STATE OF CALIFORNIA, } ss:
County of Amador, }

In the Circuit Court of the United States.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL CO. *et als.*

Eugene Dooley, being first duly sworn, deposes and says: I am a resident of Amador county, State of California, and have been constantly for the period of thirty-five years. I am well and personally acquainted with the stream known as the Cosumnes river, in Sacramento county; its source and direction in which it flows, or course, are well known to me, having made such personal observations as would enable me to be positive; its tributaries, outlets, and general characteristics are familiar to me, and there could positively be no inlet or outlet to or from the said streams that I would not be well acquainted with. I am also familiar and personally acquainted with the mining operations carried on at Irish Hill by George Phillips and the Lambing Brothers. To my own personal knowledge there is no possible way, direct or indirect, for the waters from said mine to reach the Cosumnes river above referred to otherwise than *than* through the stream known as the Lagoon and its
243 tributaries, which intersects the said Cosumnes river about thirty-five miles from Irish Hill.

EUGENE DOOLEY.

Subscribed and sworn to before me this 12th day of November, A. D. 1885.

[NOTARIAL SEAL.] J. W. SURFACE,
Notary Public of Amador County.

Endorsed: Filed Nov. 17, 1885. L. S. B. Sawyer, clerk.

244 *Aff'd'v't of Frank Frates.*

STATE OF CALIFORNIA, } ss:
County of Amador, }

In the United States Circuit Court, Ninth Circuit.

GEORGE CASHMAN, Complainant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et als.*, Defendants.

Frank Frates, being first duly sworn, says: I am the duly authorized and acting manager, agent, and superintendent of the property in Sacramento and Amador counties belonging to the Ione Coal and Mining Company. I am perfectly and well acquainted with the mines and mining operations carried on at Irish Hill, and operated by George Philip, Ira P. Lambing and Brother, more *functionly* known and styled the Lambing Brothers. The tailings, debris, sand, gravel, and refuse from said mines are dumped on the side of the hills and in the ravines surrounding the locality, and the water from said mine flows first into a narrow sl*ew*, gulch, or ravine known as Greasewood gulch; thence it flows into a creek, river, or narrow channel known as Willow creek; from thence it flows into the sl*ew* or river known commonly as the Lagoon. It is then carried by the Lagoon for a distance of thirty miles [or] ther-about, and finally empties into the Cosumnes river, three miles from its mouth.
245 The water from said mines in flowing through Willow creek passes directly through a portion of land owned and occupied by the Ione Coal and Iron Company. There has never, to my knowledge, been any damage committed from the overflow of said Willow creek, caused by the mining operations at Irish Hill, upon said land, through which said land the streams above referred to flows.

FRANK FRATES.

Subscribed and sworn to before me this the 29th day of October, A. D. 1885.

[NOTARIAL SEAL.] J. W. SURFACE,
Notary Public, Amador County, Cal.

(Endorsed:) Filed Nov. 17, 1885. L. S. B. Sawyer, clerk.

246 At a stated term, to wit, the July term, A. D. 1885, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Friday, the 20th day of November, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable Lorenzo Sawyer, circuit judge.

GEORGE CASHMAN
vs. } No. 3833.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*

On motion of A. L. Rhodes, Esq., solicitor for the complainant, it is ordered that an appeal from the decree filed and entered herein

by said circuit court on the seventeenth day of November, A. D. 1885, being a day in the July, A. D. 1885, term of said circuit court, to the Supreme Court of the United States, be, and the same hereby is, allowed, and that a certified transcript of the pleadings, order to show cause why a temporary injunction should not issue, the affidavits herein, and proceedings be forthwith transmitted to the Supreme Court of the United States upon the appellant giving a bond in the sum of five hundred dollars.

247 *Bond on Appeal.*

In the Supreme Court of the United States.

GEORGE CASHMAN, Appellant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Appellees. } No. 3833.

Know all men by these presents that we, H. H. Fassett and Daniel Flint, are held and firmly bound unto said appellees, the Amador and Sacramento Canal Company, a corporation, H. S. Byam, John D. Hurley, John Haggerty, —— Mackey, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, and Henry Levi Lambing, copartners under the firm-name of Lambing Brothers; Abner T. Hale and Jacob C. Baughman, copartners under the firm-name of Hale & Baughman, Aaron Ball, Joseph Gallogly, and Jere-
248 miah Bliss, in the sum of five hundred dollars, gold coin of the United States of America, to be paid to said appellees, their heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

In witness whereof we have hereunto set our hands and affixed our seals this 23d day of November, 1885.

The condition of this obligation is such that whereas the above-named George Cashman has taken an appeal to the Supreme Court of the United States to reverse the decree rendered by the circuit court of the United States of America, in the ninth judicial circuit, in and for the district of California, in the cause entitled George Cashman *vs.* Amadador and Sacramento Canal Company *et al.* (No. 3833), which said decree was filed and entered of record on the 17th day of November, 1885: Now, therefore, if the above-named
249 George Cashman shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

H. H. FASSETT. [SEAL.]
DANIEL FLINT. [SEAL.]

Signed, sealed, and delivered in the presence of—
ROB'T T. DEVLIN.

UNITED STATES OF AMERICA, } *ss:*
District of California, }

H. H. Fassett and Daniel Flint, being duly sworn, each for himself, says: That he is a householder within the district aforesaid, and that he is worth the sum of five thousand dollars in gold coin of the United States of America, exclusive of property exempt from execution and over and above all his first debts and liabilities.

H. H. FASSETT.
DANIEL FLINT.

Subscribed and sworn to before me this 26th day of November, 1885.

[SEAL.] ROB'T T. DEVLIN,
Notary Public, Sacramento, Cal.

250 Endorsed: The form of the within bond and the sufficiency of the sureties thereon are hereby approved. (Signed) Lorenzo Sawyer, circuit judge. Filed November 24, 1885. L. S. B. Sawyer, clerk.

251 In the Circuit Court of the United States for the District of California.

GEORGE CASHMAN, Complainant and Appellant,
vs.
AMADOR AND SACRAMENTO CANAL COMPANY *et al.*, Respondents and Appellees. } No. 3833.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing two hundred and fifty written and printed pages numbered from 1 to 250, inclusive, to be a full, true, and correct copy of the record and all proceedings in the above and therein entitled cause, and that the same together constitute the transcript on appeal to the Supreme Court of the United States in said cause.

Attest my hand and the seal of said circuit court this
252 ninth day of December, A. D. 1885.

[The Seal of the Circuit Court, District of Cala.]

L. S. B. SAWYER, *Clerk.*

253 UNITED STATES OF AMERICA, *ss:*

To the Amador and Sacramento Canal Company, a corporation created under and in pursuance of the laws of the State of California; H. S. Byam, John D. Hurley, John Haggerty, —— Mackey, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, and Henry Levi Lambing, who are copartners residing at and engaged in mining at Irish Hill, in Amador county, under the firm-name of Lambing Brothers; Abner T. Hale and Jacob C. Baughman, who are copartners residing at and engaged in mining at Indian Diggings, in El Dorado county, under the firm-name of Hale & Baughman; Aaron Ball, James Gallogly, Jeremiah Bliss, Greeting:

254 You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the seventeenth day of December, A. D. 1885, pursuant to an order allowing an appeal from the final decree of the circuit court of the United States of America for the district of California, in the cause wherein George Cashman is appellant and you are appellees, to show cause, if any there be, why the said decree in the said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States in and for the district of California, this
255 27th day of November, A. D. 1885, and of the Independence of the United States the one hundred and tenth.

[The Seal of the Circuit Court, District of Cala.]

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

256 [Endorsed:] No. 3833. United States Supreme Court. George Cashman, appellant, [*vs.*] The Amador and Sacramento Canal Company *et al.*, appellees. Citation. Service of a copy of the within citation is hereby acknowledged this 30 day of November, A. D. 1885. Estes & Wilson, att'ys for Lambing & Phillips. McKune & George, solicitors for Amador & Sacramento Canal Co., H. S. Byam, Jas. Galogly, Martin Welch, Gideon Devore, and J. Bliss. Blanchard & Swister, solicitors for def'ts Hale, Baughman, & Ball, this 2d day of December, 1885.

Written across face: Filed Dec'r 4, 1885. L. S. B. Sawyer, clerk.

Endorsed on cover: California C. C. U. S. No. 1233. George Cashman, appellant, *vs.* The Amador and Sacramento Canal Company *et al.* Filed December 21st, 1885.

118-58

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CLERK

Supreme Court of the United States.

No. 1233.

GEORGE CASHMAN, APPELLANT,

v.

AMADOR & SACRAMENTO CANAL CO. ET AL.,

APPELLEES.

BRIEF FOR APPELLANT.

A. L. RHODES,
Att'y for Appellant.

GIBSON BROS. PRS. WASH.

2

In the Supreme Court of the United States.

GEORGE CASHMAN, APPELLANT,

v.

AMADOR & SAC. CANAL CO. ET AL., APPELLEES.

No. 1233.

Appellant's Brief.

This is an action to restrain the defendants, who are hydraulic miners, from causing the *debris* coming from their mines to flow into the Cosumnes river and thence over the lands of the appellant. The appellant is the owner of a large body of lands, situate in the county of Sacramento, State of California, and lying on the banks of that river. About 350 acres of the land are bottom-lands of the river, and about the same amount of his lands are adjacent to the bottom-lands. The appellees are engaged in mining by the hydraulic process, using large streams of water, which, under great pressure—from one hundred to three hundred vertical feet—are projected against the banks of the mines, after the same have been loosened by blasts of powder; and by those means are causing the earth, sand, and gravel from their mines to flow into the river, and thence down the river and over the lands of the appellant.

A portion of the bottom-lands of the appellant are already destroyed by being covered with mining *debris* to a depth of from one to several feet. The mining, as the same has been and is being conducted, produces a nuisance which causes special damages to the appellant's lands. The appellees have, in their mining operations, discharged many hundred thousand cubic yards of clay, sand, and gravel into the river, and now the river-bed is to a large degree filled with the mining *debris*, so that, even with a small rise of the water in the stream, a large portion of the *debris* flowing from the mines is carried upon the appellant's lands, and other lands similarly situated, and is constantly extending the area of destruction. They intend and threaten to continue the prosecution of their mining operations as they have heretofore conducted them. The appellant, in order to preserve his lands from further injury and ultimate total destruction, commenced this action.

This character of mining has been conducted for several years by many miners upon most of the streams that are tributary to the Sacramento river, and to such an extent has this mining been conducted that the beds of the tributary streams, in their courses through the valley of the Sacramento, are nearly filled, and, in some instances, the present beds are higher than the former banks. The Sacramento river, from the mouth of the Feather river to a point below the mouth of the Cosumnes, has been filled to the depth of from seven to sixteen feet. From fifty to one hundred thousand acres of land in the Sacramento valley, as prolific as any land under the sun, has been destroyed—rendered as barren as the pits of the mines—and an additional hundred thousand acres are in imminent danger. The public property of the several counties is injured and threatened with further injury. Public highways, bridges,

etc., are injured and threatened with further damage. The lands of the taxpayers of the county are being impaired in value, and the public revenues derived therefrom are being diminished each year.

The litigation in actions of this class is necessarily protracted and very expensive, the costs and expenses amounting, perhaps, to $10,000 or more.

Many of the foregoing facts are historical, and are as well known as that the waters of the Sacramento flow into Suison Bay. The 70,000,000 of cubic yards of the *debris* from one mine, and the unnumbered millions of yards of *debris* from the hundred or more of other hydraulic mines, dumped into the rivers, or their tributary streams in the mountains, necessarily produce such injurious results to the rivers, private lands, public property, public roads, etc., as we have stated.

Under these circumstances, and in view of the fact that the injuries are inflicted upon a large number of persons, that it falls upon both public and private property, that the expense of the litigation is too great for one farmer to incur, and that such injuries are constantly impairing the sources of public revenue, several of the counties of the State have undertaken to bear the larger part or all of the expenses of the litigation, when an action has been instituted in the name of a private party who has suffered and is threatened with injuries resulting from such mining operations as we have mentioned.

In this case, Cashman, the plaintiff, having sustained great and irreparable injury, and being threatened with still further injury of the same character, resulting from the mining works of the defendants, was willing and anxious to commence an action against the defendants to prevent a further injury to his lands. The county of Sacramento, within which the lands of the plaintiff are situated

and which includes the larger part of the Cosumnes river, believing that the public should bear the expense of the litigation, for the reasons above stated, entered into the agreement which is recited in the decree in this case.

The circuit court, upon the bill of complaint and certain affidavits of which it is sufficient to say that they fully sustained the bill, granted a restraining order upon the execution of a proper bond on behalf of the complainant, and ordered that the defendants show cause why a preliminary injunction should not be granted.

Upon the calling for hearing of the motion for a preliminary injunction, the defendants presented to the court the agreement which is recited in the decree—the agreement to procure counsel for plaintiff, and pay the costs and expenses of the litigation—and moved that the action be dismissed.

The court dismissed the action and ordered a decree to that effect to be entered.

ASSIGNMENT OF ERRORS.

The circuit court erred in holding that the said action was collusive.

The said court erred in deciding that it did not have jurisdiction of the action.

The said court erred in ordering and decreeing that said action be dismissed for the want of jurisdiction.

POINTS AND AUTHORITIES FOR APPELLANT.

The only point presented by the appellees to the court below, in support of the motion to dismiss, was the point that the action was collusive within the meaning of sec. 5 of the act of March 3d, 1875, which provides that if "it shall appear to the satisfaction of said circuit court

" * * * that the parties to said suit have been improperly " or collusively made or joined, either as plaintiffs or de- " fendants, for the purpose of creating a case cognizable " or removable under this act, the said circuit court shall " proceed no further therein, but shall dismiss the suit or " remand it," etc. (18 U. S. Stats., p. 472.) Upon that point alone, the court ordered a dismissal of this action.

The record in the cause is voluminous, but the larger part of it consists of affidavits which were used by the appellant in procuring the restraining order, pages 21 and 22, and affidavits filed by the appellees, to be used on the hearing of the order, to show cause why a temporary injunction should not be issued. Those affidavits have no bearing on the question upon which the decree dismissing the bill of complaint was rendered.

The only portion of the record which relates to the question upon which this appeal depends is contained in the first fourteen (14) pages of the printed record, and consists of the bill of complaint and decree.

For the purposes of the motion to dismiss the bill, all the averments of the bill stand as admitted by the appellees to be true.

This cause does not come within either of the prohibitory clauses of sec. 5 of the act of Congress of March 3, 1875. (18 U. S. Stats., p. 470.) It appears from the record that the suit does really and substantially involve a controversy properly within the jurisdiction of the circuit court; but it does not appear that Cashman was either improperly or collusively made or joined as a party to the suit, or that he was made the complainant for the purpose of creating a cause cognizable under that act.

Cashman alleges in his bill that he is an alien and a citizen of Canada, and that the defendants are citizens of California. He shows that for many years last past he has

been the owner in fee and the occupant of the lands described in his bill. During his ownership of those lands, they have sustained the injuries mentioned in the bill.

The defendants intend to prosecute their mining operations as they have done in the past; and thereby the lands of Cashman are threatened with still further injuries, resulting from the flow of the mining *debris* of the defendants.

The acts performed by the defendants constitute a nuisance, and the doing of similar acts in the future will continue and repeat the nuisance; and as they have been and will be injurious to Cashman—will work an irreparable injury to his lands—he has a complete cause of action against the defendants, and is entitled to the aid of an injunction against the defendants in order to protect his lands from entire destruction.

Cashman having this cause of action, and being entitled to bring his action in the circuit court, and having brought his action; the question recurs, whether the payment of the costs and expenses of the litigation, and the procuring of counsel to conduct it, by a person or persons who are interested in the legal questions involved in the litigation and who are sustaining damages and are threatened with damages from similar or the same causes that have injured and threaten further injury to Cashman's lands, constitutes such collusion as is prohibited by sec 5. of the act of 1875.

There is not the shadow of a basis for an assertion that the payment, or promise of payment, of such costs and expenses, including counsel fees, constitutes an improper or collusive making of Cashman a party to this action. The admitted facts that he owns the land, and has suffered, and is threatened with, the damages alleged in the bill of complaint, and that the defendants have caused and will

continue to cause such damages, renders it impossible that he could have become the complainant in the action by any kind of collusion. An inducement, whatever may be its nature, offered by a third person to a party having a cause of action to induce him to bring an action upon that cause of action, is not, in any sense, an improper or collusive making of him a party to the action.

To come within the prohibition of sec. 5, the party in whose name the action is brought must be collusively made such party *for the purpose of creating a case cognizable* under that act. The procuring of Cashman to sue upon the cause of action which he for years and then held—whether he was so procured by the promise of the payment of costs and expenses or of a gross sum—is not in any just sense the creation of a cause of action cognizable in the Federal courts, nor is it even the *creation* of such a cause of action in any sense.

It cannot be doubted that if a number of persons have each a cause of action, they may agree that one case shall be brought and tried as a test case, and that all of those persons shall contribute to the expenses of the test case, or that a number less than all shall contribute to or pay all of such expenses.

Suppose, that of the bonds issued by the Central Pacific R.R. Co., an amount thereof of the value of $10,000 is held by a citizen of New York, and that the residue thereof is held by a large number of citizens of California; and suppose that it is necessary that actions be commenced for the purpose of establishing the validity of the bonds; and suppose that because of the decisions of the State court on similar questions it is deemed proper that the question as to the validity of the bonds should be determined by the circuit court, and ultimately by this Court; can any one doubt the propriety and legality of an arrang-

ment by which an action is brought in the circuit court in the name of the citizen of New York upon his own bonds, and by which arrangement the costs and expenses of the suit are to be defrayed, in part or in whole, by the California bondholders? Is not such an arrangement commendable—an arrangement by which the entire controversy respecting the validity of the supposed bonds may be determined in one suit?

Here, every land-holder in the valley of the Sacramento is interested in this *anti-debris* litigation. The county, in one sense, and for many purposes, represents all of them, and itself owns property and has rights and interests that are injuriously affected by the flow of the mining *debris*. Why may not the county induce a person, who has a cause of action arising from the dumping into the rivers of the mining *debris*, to commence an action to restrain further injury from that cause, even if the inducement be the payment of all of his costs and expenses of the litigation? The county does not thereby make him a party to the action, nor does it create a cause of action.

The subject-matter of the suit is clearly within the jurisdiction of the circuit court, and the only question is whether the suit is in truth brought by a person who is entitled by law to bring a suit in that court. The payment of the costs and expenses of the suit does not make the person so paying a party to the suit; nor does it make the dispute or controversy between the complainant and the defendants any the less real or substantial; nor does it convert the suit into one between the person paying the expenses and the defendants, although the party so paying may indirectly or remotely realize some benefit from the adjudication that may be made in the action.

The statute inhibits, we think, fictitious actions between parties who might litigate in the Federal courts; but its

principal purpose is to prevent the transfer of a cause of action by one who cannot sue in the Federal courts, to one who can sue therein.

In Williams *v.* Nottaway, (104 U. S., 209,) the plaintiff owned only three of the bonds in suit, of $100 each, and all the others had been transferred to him for collection, and to enable him to sue thereon—he being a citizen of another State than that in which the action was brought—and the court was of the opinion that as the parties transferring the bonds could not have sued in that court, the transfer to the plaintiff to enable him to bring suit in that court was done "for the purpose of creating a case" for the parties transferring the bonds. Williams had no real interest in the bonds transferred to him. Here, on the contrary, the cause of action never was held by the county of Sacramento; but Cashman, who owns the land, holds the cause of action, and the judgment, when recovered, will belong exclusively to him, though the county and hundreds of individuals may indirectly be benefited by the announcement of the principles of law, upon which the decree may proceed. In that case there was a transfer which was merely colorable. Here there was no transfer. Cashman, as the owner of the land, was always entitled to sue in the circuit court to prevent the threatened injuries to his lands. There was here no collusive making or joinder of parties.

Farmington & Pillsbury (114 U. S. 138) came within the prohibition of that section. The coupons in suit had been assigned colorably and nominally to the plaintiff, but the holders of the bonds were the real owners of the coupons; and the plaintiff, a citizen of another State, took the apparent title for the purpose of bringing an action on the coupons in the U. S. circuit court. The bondholders were the real owners of the coupons, and the plaintiff was a mere

collector for their benefit, and he was to receive his compensation out of the moneys that might be collected by means of the action.

The court said, p. 146: "It is a suit for the benefit of the owners of the bonds. They are to receive one-half of the net proceeds of the *case they have created by their transfer of the coupons* gathered together for that purpose;" and accordingly the suit was ordered to be dismissed as a collusive suit, within the meaning of sec. 5 of the act of 1875.

The court in that case, after discussing the right of an assignee to maintain an action in a Federal court, upon negotiable paper, proceeded to say, p. 144: "This opened wide the door for frauds upon the jurisdiction of the court, by collusive transfer, so as to make colorable parties, and create cases cognizable by the courts of the United States. To protect the courts, as well as parties, against such frauds upon their jurisdiction, it was made the duty of the court, at any time when it satisfactorily appeared that a suit did not 'really and substantially involve a dispute or controversy' properly within its jurisdiction, or that the parties 'had been improperly or collusively made or joined * * * for the purpose of creating a case cognizable' under that act, 'to proceed no further therein,' but to dismiss the suit or remand it to the State court from which it had been removed."

The opinion clearly indicates the purpose of that section of the act, and points out all the suits that come within the prohibition of the section, except, perhaps, those which are fictitious, which do not involve a real controversy between the parties.

In Hayden *v.* Manning, (106 U. S., 586,) the land in controversy was nominally conveyed to the plaintiff in order that he might sue in the U. S. circuit court; and it was held

that the purpose of the 5th sec. of the act was to prevent the maintenance in that court of suits collusively created in that manner.

Bernards *v.* Stebbins, (109 U. S., 353,) also shows that the purpose of sec. 5 is to prevent collusive—mere colorable—transfers of causes of action for the purpose of creating causes cognizable in the courts of the United States.

It appeared in each of those cases—two cases having been considered by the court together—that the plaintiff held bonds, in an amount sufficient to entitle him to maintain an action thereon in the circuit court, and that he also held other bonds which had been assigned to him for collection. This Court ordered that the bills be dismissed, as to the bonds which had been assigned for collection, but that the bills be retained as to the bonds owned by the plaintiffs.

There is not a word in either of those cases, or in the other cases in this Court, construing sec. 5, that tends to the conclusion that it was the purpose of the section to prohibit persons, who are interested in the legal questions involved in a controversy that may be litigated in the Federal courts, from assisting one of the parties to the litigation, or even from inducing the party, who has a cause of action within the jurisdiction of the Federal courts, to bring and prosecute his action. There is nothing in the policy which dictated that enactment tending to the conclusion that it was intended to preclude persons situated as we have suggested, from aiding in the prosecution or defence of an action of which the Federal courts have jurisdiction.

If this be not so, this Court would have ordered the bills to be dismissed in *Bernard's* v. *Stebbins*, as to *all the bonds*, as well as those which were held by the plaintiffs in their own right, as those which were held for collection only;

for it appears in the case, p. 353, that the owners of the bonds assigned for collection shared the expenses of the litigation, and such an arrangement would be presumed in the absence of a contrary showing.

We would urge that the question of collusion is not dependent upon the amount or the proportion that may be contributed towards defraying the expenses of the litigation. If the payment by citizens of the county or State, or by the county, of the expenses of the suit brought by Cashman to prevent injury to, or the distruction of, his lands, will bring the case within the prohibitions of sec. 5—will convert the suit into a collusive suit—then the payment by them of any portion or amount thereof will have the same disastrous effect upon the suit. The payment of $15 by either or all of them will be as efficacious in making the suit collusive, or in producing an improper or collusive joinder of Cashman, as would a payment by the same parties of $15,000.

If the position of the appellees be sustainable, then if in a suit, after its removal to the circuit court on the ground of the citizenship of the defendant, it should appear that citizens of the State were defraying in whole or in part the expenses of the litigation incurred by the defendant, it would be the duty of the circuit court to remand the cause; that is to say, citizens of the State may assist each other in defraying the expenses of litigation; but if they should assist the citizen of another State, or an alien, in defraying like expenses incurred by him in the circuit court, the cause must at once terminate in that court by being dismissed or remanded.

We insist that the undertaking on the part of the county to pay the expenses of the litigation was not collusive in the sense of sec. 5, but that it was commendable in any view that can be taken of the matter. The expenses of

such litigation are very great, and it is manifest that the public as well as private interests will be better subserved by the prosecution of one action, rather than by compelling all of those who are sustaining such damages as are described in the bill, to endure them until their lands are completely destroyed, because the expenses of the litigation will be more than each one is able to meet.

We confidently pray that the decree may be reversed.

Respectfully submitted.

A. L. RHODES,
Attorney for Appellant.

Supreme Court of the United States.

GEORGE CASHMAN, APPELLANT,
v.
AMADOR & SACRAMENTO CANAL CO. ET AL., APPELLEES.
No. 1233.

To Amador & Sacramento Canal Company, H. S. Byam, John D. Hurley, John Hagerty, —— Mackey, Martin Welch, Gideon Devore, George W. Phillip, Ira P. Lambing, Henry Levy Lamburg, Abner T. Hall, Jacob C. Baughman, Aaron Ball, James Gallogly, and Jeremiah Bliss, appellees in said cause, and their attorneys:

Please take notice that the above-entitled cause was advanced by said Court, on its docket, at its October term, 1885, under Rule 32 of said Court; and that the said appellant, George Cashman, will, on the day of , 1886, at the opening of said Court, or as soon thereafter as counsel can be heard, move said Court that said cause be submitted to said Court for decision, on the printed briefs of said appellant, a copy of which is hereto attached, and on such printed briefs as the said appellees or any of them may have filed in said Court, on or before said last mentioned day, ~~January , 1886~~. Jany 1886.

A. L. RHODES,
Attorney for the Appellant.

Service upon me of a copy of the foregoing brief and notice, on this the day of , 1886, is hereby admitted.

118-58

Supreme Court U. S.
FILED
MAR 25 1886
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

No. 1233.

GEORGE CASHMAN, Appellant,

vs.

THE AMADOR AND SACRAMENTO CANAL COMPANY ET AL., Appellees.

BRIEF OF APPELLEES.

Facts.

On September 12, 1882, the Board of Supervisors of the County of Sacramento, State of California, commenced suit in the Superior Court of said county in the name of Diggory Hobbs, as plaintiff, against the Amador and Sacramento Canal Company, seeking the same relief as Cashman seeks in this (folios 162 to 176 and 109).

That said last-mentioned case was heard on motion for preliminary injunction, and the defendant was permitted to carry on its mining operations under the supervision of Court (folios 179 to 190).

The said Board of Supervisors not being satisfied with the action of the State Courts, on the ninth day of September, 1885, commenced this action in the name of Cashman.

The particulars of the agreement with Cashman, whereby he permits the use of his name as plaintiff, are in an agreement in writing which is set out in the transcript (folios 15 to 18). It recites

(*a*) That the County of Sacramento (not George Cashman) desires to restrain the miners working by hydraulic process on the Cosumnes river.

(*b*) That they are using the bed thereof as a deposit for tailings.

(*c*) That it is desired to bring such suit in the Circuit Court United States.

(*d*) That George Cashman has brought or is about to bring said suit in the Circuit Court.

(*e*) That the County of Sacramento is directly interested in said suit, and in the subject matter of litigation.

(*f*) That the same is brought for its benefit, *the county being unable to sue in such* (U. S. C. C.) *Court.*

(*g*) That the county has agreed to pay the costs and expenses of such suit, and to keep the said George Cashman safe and harmless from all counsel fees, costs and charges, to be paid or incurred thereon.

Contract.

1. That the county will supply Cashman with the services of, as attorneys, A. L. Rhodes, S. C. Denson and Robert T. Devlin, to institute, conduct and manage such suit.

2. The county to pay all charges, costs and expenses.

3. The county to hold and keep the said Cashman safe and harmless from any costs, counsel fees, charges or expenses, to be paid or incurred in the institution, conduct and prosecution of said suit.